Supreme Court of the United States

OCTOBER TERM, 1969

No. 1441

IN RE BARBARA BURRUS ET AL.,

Petitioners.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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NORTH CAROLINA COURT OF APPEALS

SECOND DISTRICT

Spring Session, 1969—Fall Term 1969 #15

No. 692DC256

From Hyde

IN RE: BARBARA BURRUS (69-J-17), SARAH WHITNEY (69-J-18), DARLENE MCCOY (69-J-19), NINA WHITNEY (69-J-20), DORENE HARRIS (69-J-21), PATRICIA COLLINS (69-J-22), DOLLIE GIBBS (69-J-23), MARIE HARRIS (69-J-24), TRINA SELBY (69-J-1), DORENE HARRIS (69-J-3), JULIA ANNA COLLINS (69-J-4), CHERLYN WHITNEY (69-J-5), CATHERINE GIBBS (69-J-6), DEBORAH ANN COLLINS (69-J-8), MARIA HARRIS (69-J-9), EDDIE WHITLEY (69-J-10), ALONZO EDWARD HOLLOWAY (69-J-30), EVELYN EVANGELINE GIBBS (69-J-11), ROSE MARY COLLINS (69-J-12), DEBRA ANN COLLINS (69-J-13), CATHERINE GIBBS (69-J-14), JULIE ANNA COLLINS (69-J-16), ELVIRA VASHTI WESTON (69-J-28), SUDIE BELL MCCULLOR (69-J-29), BARBARA BURRUS (68-J-4), WILLIAM BLOUNT (68-J-5), NEKOLA GREEN (68-J-6), SHARON HARRIS (68-J-7), SARAH ANNETTE WHITNEY (68-J-8), WALTER ANTHONY GREEN (68-J-9), DESSIE HARRIS (68-J-10), EVELYN GIBBS (68-J-11), RONNIE LEE TOPPING (68-J-12), TYRONE DUDLEY (68-J-13), THERESA BLOUNT (68-J-14), LINDA SUE GIBBS (68-J-15), PATRICIA COLLIN (69-J-27), DONALD WHITE (69-J-25), WILMA JOYCE WHITAKER (69-J-26), JAMES LAMBRETH HOWARD (68-J-3), ROSE MARY WHITNEY (69-J-15), CHERLYN D. WHITNEY (69-J-2), TRINA SELBY (69-J-7), ALONZO EDWARD HOLLOWAY (69-J-31)

* * * *

Before WARD J., Hyde County District Court, Juvenile Session, 9 January 1969. Appeal by ALL PARTIES LISTED IN THE CAPTION. (Filed C. A. 4-1-69)

* * * *

JUVENILE PETITION (Barbara Burrus) #69-J-17

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Barbara Burrus
Age 13
Box 83, Fairfield, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Lillie Mae Burrus	mother	Box 83, Fairfield, N.C.
David Burrus	father	Box 83, Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 14, 1968, stand upon the Public Highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child

such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3 day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P. Washington, N.C.

(Verified by Charles Smith, Petitioner, on 1-3-69).

JUVENILE PETITION (Sarah Whitney) #69-J-18

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Sarah Whitney
Age 11
Rt. 1, Fairfield, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Sarah Spencer	Grandmother	Rt. 1, Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and wilfully on November 14, 1968, stand upon the public highway or street in such a manner

so as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and controls as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P. Washington, N.C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Darlene McCoy) #69-J-19)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Darlene McCoy
Age 12
Rt. 1, Box 64,
Fairfield, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
James McCoy	Father	Rt. 1, Box 64 Fairfield, N.C.
Carol McCoy	Mother	Rt. 1, Box 64, Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 14, 1968, stand upon the Public Highway or street in such a manner so as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P. Washington, N.C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Nina Whitney) #69-J-20)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Nina Whitney
Age 14
Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Sarah Spencer	Grandmother	Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 14, 1968, stand upon the highway or street in such a manner as to impede the regular flow or traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P. Williamston, N.C.

(Verified by Sgt. Willie Rogers, Petitioner, 1-3-69)

JUVENILE PETITION (Dorene Harris) #69-J-3)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Dorene Harris
Age 12
Rt. 1, Box 69-C-1
Fairfield, N. C.

I, Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alle[illegible]

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
James Burrus	Father	Rt. 1, Box 69-C-1 Fairfield, N.C.
Mellie Burrus	Mother	Rt. 1, Box 69-C-1 Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3 day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P. Washington, N.C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Patricia Collins) #69-J-22

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Patricia Collins
Age 15
P.O. Box 122, Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mary Edna Collins	Mother	P.O. Box 122 Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on Nov. 14, 1968, stand upon the public highway or street in such a manner so as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3 day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P. Williamston, N.C.

(Verified by Sgt. Willie Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Dollie Gibbs) #69-J-23

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Dollie Gibbs
Age 14
Fairfield, N. C.

Sgt. Willie Rogers, petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less then sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Shirley Gibbs	Mother	Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 14, 1968, stand upon the public highway or street in such a manner so as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P. Williamston, N.C.

(Verified by Sgt. Willie Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Maria Harris) # 69-J-24

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Maria Harris
Age 14
Rt. 1, Box 69-C-1, Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above

(whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mellie Burrus	Mother	Rt. 1, Box 69-C-1 Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 14, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P. Williamston, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Trina Selby) #69-J-1

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Trina Selby
Age 14
Rt. 1, Box 60, Engelhard, N.C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mr. James Mackey, Jr.	Father	Rt. 1, Box 60 Engelhard, N.C.
Mrs. James Mackey, Jr.	Guardian	Rt. 1, Box 60 Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlaful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P. Washington, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Dorene Harris) #69-J-3

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Dorene Harris
Age 12
Rt. 1, Box 69-C-1, Fairfield, N. C.

I, Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
James Harris Burrus	Father	Rt. 1, Box 69-C-1 Fairfield, N.C.
Janie B. Harris Mellie Burrus	Mother	Rt. 1, Box 69-C-1 Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child

such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3 day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N.C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Julia Anna Collins) #69-J-4

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the matter of
Julia Anna Collins
Age 14
Rt. 1, Box 65C, Engelhard, N. C.

I, Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Pencie Cole Collins	Mother	Rt. 1, Box 65C, Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Cherlyn Whitney) #69-J-5

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Cherlyn Whitney (Shirley D. Whitney)
Age 15
Fairfield, N. C.

I, Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Bob Whitley (Whitney)	Father	Fairfield, N.C.
Janie B. Whitney	Mother	Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Sgt. Willie Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Catherine Gibbs) #69-J-6

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Catherine Gibbs
Age 15
Fairfield, N. C.

I, Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Shirley Gibbs	Mother	Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Deborah Ann Collins) #69-J-8

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Deborah Ann Collins
Rt. 1, Box 65 C, Engelhard, N. C.
Age 11

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Pencie Collins	Mother	Rt., 1, Box 65C Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said

child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. Willie Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Marie Harris) #69-J-9

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Marie Harris
Age 14
Rt. 1, Box 69, Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
James Burrus	Father	Rt. 1, Box 69 Fairfield, N.C.
Mellie Burrus	Mother	Rt. 1, Box 69, Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and willfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. Willie Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Eddie Whitley) #69-J-10

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Eddie Whitley
Age 14
Fairfield, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Inna Farrow	Mother	Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Alonzo Edward Holloway)
#69-J-30

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Alonzo Edward Holloway
Age 15
Swan Quarter, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named

above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Johnny Midway	Father	Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Is unlawful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 7th day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. Willie Rogers, Petitioner, on 1-7-69)

JUVENILE PETITION (Evelyn Evangeline Gibbs)
#69-J-11

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Evelyn Evangeline Gibbs
Age 12
Rt. 1, Box 37C, Engelhard, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mr. Pell Gibbs	Father	Rt. 1, Box 37C Engelhard, N.C.
Mrs. Pell Gibbs	Mother	Rt. 1, Box 37C, Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 13, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said

child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Rose Mary Collins) #69-J-12

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Rose Mary Collins
Age 14
Box 175, Engelhard, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mr. Charles Weston	Father	Box 175, Engelhard, N.C.
Mrs. Charles Weston	Mother	Box 175, Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 13, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Debra Ann Collins) #69-J-13

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Debra Ann Collins
Age 11
Rt. 1, Box 65, Engelhard, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Pencie C. Collins	Mother	Box 65, Rt. 1, Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 13, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Catherine Ann Gibbs)
#69-J-14

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Catherine Ann Gibbs
Age 15
Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court of this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Shirley Gibbs	Mother	Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 13, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. W. Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Julie Anna Collins) #69-J-16

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Julie Anna Collins
Age 14
Rt. 1, Box 65, Engelhard, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above

(whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Pencie C. Collins	Mother	Rt. 1, Box 65 Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 13, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the Court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N.C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Sudie Bell McCuller) #69-J-29

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Sudie Bell McCuller
Age 14
New Holland, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mr. Isiah McCuller	Father	New Holland, N.C.
Mrs. Isiah McCuller	Mother	New Holland, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 13, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child

such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N.C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Barbara Burrus)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Barbara Burrus
Age 14
Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
David Burrus	Father	Fairfield, N.C.
Lillie Mae Burrus	Mother	Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on December 6, 1968 stand upon the highway or street in such a manner as to impede the regular flow of traffix, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 12-6-68)

JUVENILE PETITION (William Blount)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
William Blount
Age 14
Rt. 1, Box 369, Swan Quarter, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Joe Lee Blount	Father	Rt. 1, Box 69 Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully, on December 6, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 12-6-68).

JUVENILE PETITION (Nekola Green)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Nekola Green
Rt. 1, Box 113, Swan Quarter, N. C.
Age 14

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of

the District Court for this County at the address shown above.

That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Etta Green	Grandmother	Rt. 1, Box 113 Swan Quarter, N.C.
Edom Green	Grandfather	Rt. 1, Box 113 Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully, on December 6, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 12-6-68)

JUVENILE PETITION (Sharon Harris) #68-J-7

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Sharon Harris
Age 14
P. O. Box 55, Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Foraker Harris	Grandfather	P.O. Box 55, Fairfield, N.C.
Katie Harris	Grandmother	P.O. Box 55, Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully on December 6, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child

such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 12-6-68)

JUVENILE PETITION (Sarah Annette Whitney)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Sarah Annette Whitney
Age 11
Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Sarah Spencer	Grandmother	Fairfield, N.C.

3. That the facts and circumstances supporting this petition for court action are as follows:

Did unlawfully and willfully, on December 6, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 12-6-68)

JUVENILE PETITION (Walter Anthony Green)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Walter Anthony Green
Age 13
Rt. 1, Box 70, Swan Quarter, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Emily Green	Grandmother	Rt. 1, Box 70 Swan Quarter, N.C.

3. The facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully, on December 6, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 12-6-68)

JUVENILE PETITION (Dessie Harris)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Dessie Harris
Age 14
Rt. 1, Box 68A, Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Arthur Harris	Grandfather	Rt. 1, Box 68A Fairfield, N.C.
Leone Harris	Grandmother	Rt. 1, Box 68A Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully, on Dec. 6, 1968, stand upon the highway in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N.C.

(Verified by Sgt. W. Rogers, Petitioner, on 12-6-68)

JUVENILE PETITION (Evelyn Gibbs)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Evelyn Gibbs
Age 12
Rt. 1, Box 37C, Engelhard, N.C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Pell Gibbs	Father	Rt. 1, Box 37C, Engelhard, N.C.
Ada Pearl Gibbs	Mother	Rt. 1, Box 37C, Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully on December 6, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said

child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. W. Rogers, Petitioner, on 12-6-68)

JUVENILE PETITION (Ronnie Lee Topping) #68-J-12

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Ronnie Lee Topping
Age 14
Rt. 1, Box 104, Swan Quarter, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Rosa Mackey	Mother	Rt. 1, Box 104 Swan Quarter, N.C.
Golden Mackey	Father	Rt. 1, Box 104 Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully on December 6, 1968, stand upon the highway or street in such a manner as to impede the regular flor of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. Willie Rogers, Petitioner, on 12-6-68)

JUVENILE PETITION (Tyrone Dudley) #68-J-13

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Tyrone Dudley
Age 14
Rt. 1, Box 139, Swan Quarter, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Ella Dudley	Grandmother	Rt. 1, Box 139 Swan Quarter, N.C.
Daisey Dudley	Grandfather	Rt. 1, Box 139 Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully, on Dec. 6, 1968, stand upon the highway in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 6th day of December, 1968.

/s/ SGT. W. ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Charles Smith, Petitioner, on 12-6-68)

JUVENILE PETITION (Theresa Blount) #68-J-14

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Theresa Blount
Age 15
Rt. 1, Box 69, Swan Quarter, N. C.

Sgt. Willie Rogers, S.H.P., Petitioner, having sufficient knowledge or information to believe that the child

named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Joe Lee Blount	Father	Rt. 1, Box 69 Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and willfully on Dec. 6, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 13 day of December, 1968.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P.

(Verified by Sgt. Willie Rogers, Petitioner, on 12-13-68)

JUVENILE PETITION (Linda Sue Gibbs)

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Linda Sue Gibbs
Age 15
Rt. 1, Box 24, Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Caleb Gibbs, Jr.	Father	Rt. 1, Box 24 Fairfield, N.C.
Hazel Gibbs	Mother	Rt. 1, Box 24, Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and wilfully stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said

child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 16 day of December, 1968.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. Willie Rogers, Petitioner, on 12-16-68)

JUVENILE PETITION (Patricia Collins) #69-J-27

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Patricia Collins
Age 15
P.O. Box 122, Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mary Edna Collins	Mother	P.O. Box 122 Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and wilfully on December 6, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. Willie Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Donald White) #69-J-25

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Donald White
Age 15
Rt. 1, Box 149, Swan Quarter, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Harry Gibbs	Uncle	Rt. 1, Box 149 Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 18, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Wilma Joyce Whitaker)
#69-J-26

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Wilma Joyce Whitaker
Age 14
Rt. 1, Box 188, Swan Quarter

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child names above

(whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Erma Blount	Aunt	Rt. 1, Box 188 Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 18, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (James Lambert Howard)
#68-J-3

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
James Lambert Howard
Age 15
P.O. Box 222, Engelhard, N. C.

Clyde Fentress, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Thad Howard	Father	P.O. Box 222 Engelhard, N.C.
Pearl Howard	Mother	P.O. Box 222 Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

1. Did unlawfully and willfully on December 5, 1968, make rude and/or riotous noises and become disorderly in/or near a public building, to-wit: O. A. Peay School, Swan Quarter, N. C., the property of Hyde County Board of Education, in violation of GS 14-132. 2. Did unlawfully and willfully on said date above alleged interrupt and disturb a public school to-wit: O. A. Peay School, Swan Quarter, N. C., and did deface said school furniture while said school was in regular session on December 5, 1968, in violation of GS 14-273.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 5th day of December, 1968.

/s/ C. O. Fentress S.B.I.
Petitioner
Washington, North Carolina

(Verified by C. O. Fentress, Petitioner, on 12-5-68)

JUVENILE PETITION (Rose Mary Whitney) #69-J-15

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Rose Mary Whitney
Age 15
P.O. Box 166, Fairfield, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mr. George Whitney	Father	P.O. Box 166 Fairfield, N.C.
Mrs. George Whitney	Mother	P.O. Box 166 Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawfully and wilfully on November 13, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P., Williamston, N. C.

(Verified by Sgt. W. Rogers, Petitioner, on 1-3-69)

JUVENILE PETITION (Shirley Whitley (Whitney))
#69-J-2

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Shirley Whitley (Whitney)
Fairfield, N. C.

I, Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Bob Whitley (Whitney)	Father	Fairfield, N.C.
Janie B. Whitney	Mother	Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, 1968, stand upon the public highway or street in such a manner so as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
State Highway Patrol
Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Trina Selby) #69-J-7

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Trina Selby
Age 14
Rt. 1, Box 60, Engelhard, N. C.

I, Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Mr. James Mackey, Jr.		Rt. 1, Box 60 Engelhard, N.C.
Mrs. James Mackey, Jr.	Guardian	Rt. 1, Box 60 Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, stand upon the highway or street in such a manner as to impede the regular flow of traffic in violation GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3rd day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69)

JUVENILE PETITION (Alonzo Edward Holloway)
#69-J-31

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Alonzo Edward Holloway
Age 15
Swan Quarter, N. C.

Sgt. Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Johnny Holloway	Father	Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows: Did unlawful and wilfully on November 22, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 7th day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P., Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-7-69)

JUVENILE SUMMONS (Barbara Burrus #68-J-4)

TO: David Burrus, Father	Fairfield, N. C.
Lillie Mae Burrus, Mother	Fairfield, N. C.
Child, Parents, Other Person having custody	Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 10:00 o'clock, A.M., on the 18 day of December, 1968,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service 12-6-68)

JUVENILE SUMMONS (Sarah Annette Whitney #68-J-8)

TO: Sarah Spencer, Grandmother — Fairfield, N.C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 10:00 o'clock, A.M., on the 18 day of December, 1968,
For action by the court on the Petition Alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service 12-6-68)

JUVENILE SUMMONS (Darlene McCoy #69-J-19)

TO:	James McCoy	Rt. 1, Box 64, Fairfield, N. C.
	Carol McCoy	Rt. 1, Box 64, Fairfield, N. C.
Child, Parents, Other Person having custody		Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-6-69)

JUVENILE SUMMONS (Nina Whitney #69-J-20)

To: Sarah Spencer Fairfield, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9 day of
January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Dorene Harris #69-J-3)

TO: Mellie Burrus Rt. 1, Box 69-C-1, Fairfield, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-6-69)

JUVENILE SUMMONS (Patricia Collins #69-J-22)

TO: Mary Edna Collins P.O. Box 122, Fairfield, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Dollie Gibbs #69-J-23)

TO: Shirley Gibbs — Fairfield, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9 day of January, 1969,
For action by the court on the Petition Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Marie Harris #69-J-9)

TO: Mellie Burrus Rt. 1, Box 69, Fairfield, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or ----------, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-6-69)

JUVENILE SUMMONS (Trina Selby #69-J-1)

TO: Mr. James Mackey, Jr. Rt. 1, Box 60
Engelhard, N. C.

Mrs. James Mackey, Jr. Rt. 1, Box 60
Engelhard, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-8-69)

JUVENILE SUMMONS (Dorene Harris #69-J-21)

TO: Mellie Burrus Rt. 1, Box 69-C-1, Fairfield, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9 day of
January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior
Court

(RETURNED showing service 1-6-69)

JUVENILE SUMMONS (Julia Anna Collins #69-J-4)

TO: Pencie Cola Collins — Rt. 1, Box 65C Engelhard, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Shirley Whitley (Shirley D. Whitney) #69-J-2)

TO: Bob Whitley (Whitney) Fairfield, N. C.

Janie B. Whitney Fairfield, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-8-69)

JUVENILE SUMMONS (Catherine Gibbs #69-J-6)

TO: Shirley Gibbs — Fairfield, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Deborah Ann Collins #69-J-8)

TO: Pencie Collins Rt. 1, 65C, Engelhard, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9 day of
January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or ----------, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior
Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Marie Harris #69-J-24)

TO: Mellie Burrus Rt. 1, Box 69-C-1, Fairfield, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9 day of
January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or ----------, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-6-69)

JUVENILE SUMMONS (Eddie Whitley #69-J-10)

TO: Inna Farrow — Fairfield, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or ----------, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Alonzo Edward Holloway #69-J-30)

TO: Johnny Holloway Swan Quarter, N. C.

Child, Parents, Other Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be deal with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or ----------, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 7th day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service 1-8-69)

JUVENILE SUMMONS (Evelyn Gibbs #68-J-11)

TO: Pell Gibbs, Father — Rt. 1, Box 37C Engelhard, N. C.

Ada Pearl Gibbs, Mother — Rt. 1, Box 37C Engelhard, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 10:00 o'clock, A.M., on the 18 day
of December, 1968,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service 12-6-68)

JUVENILE SUMMONS (Rose Mary Collins #69-J-12)

TO: Mrs. Charles Weston Box 175, Engelhard, N. C.

Mr. Charles Weston Box 175, Engelhard, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, yau may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the Superior Court

(RETURNED showing service January, 19___)

JUVENILE SUMMONS (Debra Ann Collins #69-J-13)

TO: Pencie C. Collins, Box 65, Rt. 1, Engelhard, N. C.

Child, Parents, Other
Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Catherine Ann Gibbs #69-J-14)

TO: Shirley Gibbs — Fairfield, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9 day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service 1-6-69)

JUVENILE SUMMONS (Julie Anna Collins #69-J-16)

TO: Pencie C. Collins Rt. 1, Box 65, Engelhard, N. C.

Child, Parents, Other Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3 day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Elvira Vashti Weston #69-J-28)

TO: Victoria Weston Rt. 1, Box 75, Engelhard, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9th day of
January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service January, 1969)

JUVENILE SUMMONS (Sudie Bell McCuller) #69-J-29)

TO: Mr. and Mrs. Isiah McCuller New Holland, N. C.

Child, Parents, Other Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9 day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Barbara Burrus #69-J-17)

TO: Lillie Mae Burrus — Box 83, Fairfield, N. C.

David Burrus — Box 83, Fairfield, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock A.M., on the 9 day of January, 1969,
For action by the court on the Petition, Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3 day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service 1-6-69)

JUVENILE SUMMONS (William Blount #68-J-5)

TO: Joe Lee Blount, Father — Rt. 1, Box 69, Swan Quarter, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 10:00 o'clock, A.M., on the 18 day of December, 1968,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service 12-8-68)

JUVENILE SUMMONS (Nekola Green #68-J-6)

TO: Etta Green, Grandmother — Rt. 1, Box 113, Swan Quarter, N. C.

Edom Green, Grandfather — Rt. 1, Box 113, Swan Quarter, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 10:00 o'clock, A.M., on the 18 day of December, 1968,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service 12-6-68)

JUVENILE SUMMONS (Sharon Harris #68-J-7)

TO: Foraker Harris, Grandfather — P.O. Box 55, Fairfield, N. C.

Katie Harris, Grandmother — P.O. Box 55, Fairfield, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 10:00 o'clock, A.M., on the 18 day of December, 1968,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service 12-6-68)

JUVENILE SUMMONS (Sarah Whitney #69-J-18)

TO: Sarah Spencer Rt. 1, Fairfield, N. C.

Child, Parents, Other
Person having custody Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 9:30 o'clock, A.M., on the 9 day of January, 1969,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service 1-7-69)

JUVENILE SUMMONS (Walter Anthony Green #68-J-9)

TO: Emily Green, Grandmother — Rt. 1, Box 70, Swan Quarter, N. C.

Child, Parents, Other Person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 10:00 o'clock, A.M., on the 18 day of December, 1968,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or ----------, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service by Charlie Garawan, Deputy Sheriff (NO DATE))

JUVENILE SUMMONS (Dessie Harris #68-J-10)

TO: Arthur Harris, Grandfather	Rt. 1, Box 68A, Fairfield, N. C.
Leona Harris, Grandmother	Rt. 1, Box 68A, Fairfield, N. C.
Child, Parents, Other Person having custody	Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina,
At 10:00 o'clock, A.M., on the 18th day of December, 1968,
For action by the court on the Petition,
Alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service 12-6-68)

JUVENILE SUMMONS (Evelyn Evangeline Gibbs, No. 69-J-11)

TO: Mr. Pell Gibbs Rt. 1, Box 37C, Engelhard, N. C.

Mrs. Pell Gibbs Rt. 1, Box 37C, Engelhard, N. C.

(Child, Parents, Other Person having custody)

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 9 day of January, 1969, For action by the court on the Petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3 day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk Superior Court

(RETURNED showing service on 1-7-69)

(JUVENILE SUMMONS (Ronnie Lee Topping, No. 68-J-12)

TO: Rosa Mackey, Mother — Rt. 1, Box 104, Swan Quarter, N. C.

Golden Mackey, Father — Rt. 1, Box 104, Swan Quarter, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, At 10:00 o'clock, a.m., on the 18 day of December, 1968, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk Superior Court

(RETURNED showing service on 12-11-68)

JUVENILE SUMMONS (Tyrone Dudley, No.)

TO: **Ella Dudley, Grandmother** Rt. 1, Box 139, Swan Quarter, N. C.

Daisey Dudley, Grandfather Rt. 1, Box 139, Swan Quarter, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 10:00 o'clock, a.m., on the 18 day of December, 1968, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or ....., is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 6th day of December, 1968.

W. ALLEN CREDLE
Clerk Superior Court

(RETURNED showing service on 12-7-68)

JUVENILE SUMMONS (Theresa Blount, No. 68-J-14)

TO: Joe Lee Blount, Father — Rt. 1, Box 69, Swan Quarter, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, At 9:30 o'clock, a.m., on the 19 day of December, 1968, For action by the court on the petition alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 13 day of December, 1968.

LENORA R. BRIGHT
Assistant Clerk of the
Superior Court

(RETURNED showing service on 12-13-68)

JUVENILE SUMMONS (Linda Sue Gibbs, No. 68-J-15)

TO: Caleb Gibbs, Jr., Father — Rt. 1, Box 24, Fairfield, N. C.

Hazel Gibbs, Mother — Rt. 1, Box 24, Fairfield, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 19 day of December, 1968, for action by the court of the petition alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or ....., is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 16 day of December, 1968.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service on 12-16-68)

JUVENILE SUMMONS (Patricia Collins, No. 69-J-27)

TO: Mary Edna Collins, P.O. Box 122, Fairfield, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above cases before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 9 day of January, 1969, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service on 1-7-69)

JUVENILE SUMMONS (Donald White, No. 69-J-25)

TO: Harry Gibbs, Uncle — Rt. 1, Box 149, Swan Quarter, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 9 day of January, 1969, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service on 1-7-69)

JUVENILE SUMMONS (Wilma Joyce Whitaker, No. 69-J-26)

TO: Erma Blount, Aunt — Rt. 1, Box 188, Swan Quarter, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 9 day of January, 1969, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service on 1-7-69)

JUVENILE SUMMONS (James Lembert Howard, No. 68-J-3)

TO: James Lembert Howard — P.O. Box 222, Engelhard, N. C.

Thad Howard — P.O. Box 222, Engelhard, N. C.

Pearl Howard — P.O. Box 222, Engelhard, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 11:00 o'clock, a.m., on the 11th day of December, 1968, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The sheriff of the county named above, or _____, is hereby directed to serve this summons by reading the summons to and leaving true copies thereof with the persons summoned.

This 5th day of December, 1968.

W. ALLEN CREDLE
Clerk of the Superior Court

(RETURNED showing service on 12-5-68)

JUVENILE SUMMONS (Rose Mary Whitney, No. 69-J-15)

TO: Mr. George Whitney — P. O. Box 166, Fairfield, N. C.

Mrs. George Whitney, — P. O. Box 166, Fairfield, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 9th day of January, 1969, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The sheriff of the county named above, or ----------, is hereby directed to serve this summons by reading the summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service on 1-6-69)

JUVENILE SUMMONS (Cherlyn Whitney (Shirely D. Whitney), No. 69-J-5)

TO: Bob Whitley (Whitney) Fairfield, N. C.

Janie M. Whitney, Fairfield, N. C.

Child, Parents, Other
Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 9 day of January, 1969, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The sheriff of the county named above, or _____, is hereby directed to serve this summons by reading the summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service on 1-8-69)

JUVENILE SUMMONS (Trina Selby, No. 69-J-7)

TO: Mr. James Mackey, Jr. Rt. 1, Box 60
Engelhard, N. C.

Mrs. James Mackey, Jr. Rt. 1, Box 60
Engelhard, N. C.

Child, Parents, Other
Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 9th day of January, 1969, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The sheriff of the county named above, or .....,
is hereby directed to serve this summons by reading the summons to and leaving true copies thereof with the persons summoned.

This 3rd day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service on 1-8-69)

JUVENILE SUMMONS (Alonzo Edward Holloway, No. 69-J-31)

TO: Johnny Holloway Swan Quarter, N. C.

Child, Parents, Other Person having custody

YOU ARE SUMMONED TO A HEARING in the above case before the judge of the District Court presiding at a session to be held

In Swan Quarter, North Carolina, at 9:30 o'clock, a.m., on the 9th day of January, 1969, for action by the court on the petition, alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The sheriff of the County named above, or _____, is hereby directed to serve this summons by reading the summons to and leaving true copies thereof with the persons summoned.

This 7th day of January, 1969.

LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

(RETURNED showing service on 1-8-69)

ORDER AMENDING JUVENILE PETITIONS (Barbara Burrus, No. 68-J-4)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 10th day of Jan., 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6, 1968 the defendant above named did intentionally, unlawfully, and wilfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did wilfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Sarah Annette Whitney, No. 68-J-8)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Dec. 6, 1968, the defendant above named did intentionally, unlawfully, and wilfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Darlene McCoy, No. 69-J-19)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 14, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Nina Whitney, No. 69-J-20)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 14, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Dorene Harris, No. 69-J-3)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a state highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Patricia Collins, No. 69-J-22)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 14, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Dollie Gibbs, No. 69-J-23)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 14, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Marie Harris, No. 69-J-9)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Trina Selby, No. 69-J-1)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Dorene Harris, No. 69-J-21)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 14, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon the said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Julia Anna Collins, No. 69-J-4)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes f North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Shirley Whitley (Whitney), No. 69-J-2)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Catherine Gibbs, No. 69-J-6)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Deborah Ann Collins, No. 69-J-8)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Marie Harris, No. 69-J-24)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 14, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Eddie Whitley, No. 69-J-10)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Alonzo Edward Holloway, No. 69-J-30)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile Cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force sam in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Evelyn Gibbs, No. 68-J-11)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Dec. 6, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Rose Mary Collins, No. 69-J-12)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 13, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Debra Ann Collins, No. 69-J-13)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 13, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20.174-1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Catherine Ann Gibbs, No. 69-J-14)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 13, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Julie Anna Collins, No. 69-J-16)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 13, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174-1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Elvira Vashti Weston, No. 69-J-28)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 13, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Sudie Bell McCuller, No. 69-J-29)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 13, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Barbara Burrus, No. 69-J-17)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Nov. 14, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (William Blount, No. 68-J-5)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the County named above on or about Dec. 6, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Nekola Green, No. 68-J-6)

The above captioned case being called at the term of District Court of Hyde County called for the trial of juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this petition for court action as follows:

That at and in the county named above on or about Dec. 6, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State."

HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Sharon Harris, No. 69-J-7)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Sarah Whitney, No. 69-J-18)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Nov. 14, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Walter Anthony Green, No. 68-J-9)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6th, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Dessie Harris, No. 68-J-10)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Evelyn Evangeline Gibbs, No. 69-J-11)

The above captioned case being called at the Term of District Court of Hyde County called for the trial of Juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Nov. 13, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Ronnie Lee Topping, No. 68-J-12)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6, 1969 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Tyrone Dudley, No. 68-J-13)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6 1969 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operation upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Theresa Blount, No. 68-J-14)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Linda Sue Gibbs, No. 68-J-15)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Patricia Collins, No. 69-J-27)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6, 1968 the defendant above named did intentionally, unlawfully and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Donald White, No. 69-J-25)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Nov. 18, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Wilma Joyce Whitaker, No. 69-J-26)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Nov. 18, 1968 the defendant above named did intentionally, unlawfully and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (James Lembert Howard)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action are as follows:

That at and in the County named above on or about December 5, 1968 the defendant named above did unlawfully, willfully and intentionally and did knowingly, willfully and unlawfully interrupt and disturb the O. A. Peay School, the same being a public school owned and operated by the Board of Education of Hyde County, and located in the community of Swan Quarter, North Carolina, and being a public building, by uttering rude and riotous noises and shouts and by engaging in acts of disorderly conduct in and near said public school building, owned and operated by the Board of Education of Hyde County, which said unlawfully, rude and riotous noises, shouts and other disorderly conduct in and near public school building interrupted and disturbed the operation of said public school.

And, the said Clyde Fentress, complainant as aforesaid, upon oath further alleges that the said defendant, James Lembert Howard, did further interrupt and disturb operation of a public school operated by the Board of Education of Hyde County, the same being the O. A. Peay School, of the Community of Swan Quarter, by engaging in disorderly acts and conduct in and near said public school by seizing and scattering the papers, books and other equipment of said school and by defacing, injuring and damaging the public school furniture and other educational equipment of the said O. A. Peay School, owned and operated by the Board of Education of Hyde County, all of which occurred while said public

school was in regular session and performing the educational functions administered by said Board of Education.

All of the above riotous and disorderly interruptions and disturbances being contrary to the statutes made and provided, the same being Sections 14-132 and 14-273 of the General Statutes of North Carolina, and contrary to the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Rose Mary Whitney, No. 68-J-15)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Dec. 6, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Cherlyn Whitney (Shirley D. Whitney), No. 69-J-5)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 9th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Nov. 12, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Trina Selby, No. 69-J-7)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Nov. 12, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

ORDER AMENDING JUVENILE PETITIONS (Alonzo Edward Holloway, No. 69-J-31)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 10th day of January, 1969, prior to any other proceedings in the case, on motion by the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Nov. 22, 1968 the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willlfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

SUMMARY OF EVIDENCE:

IN RE: BARBARA BURRUS—69-J-17
SARA WHITNEY—69-J-18
DARLENE McCOY—69-J-19
NINA WHITNEY—69-J-20
DORENE HARRIS—69-J-21
PATRICIA COLLINS—69-J-22
DOLLIE GIBBS—69-J-23 and
MARIE HARRIS—69-J-24

Pursuant to GS 7A-195 of the General Statutes of North Carolina and Rule 19 (g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearings. Findings of fact are contained in the attached Orders.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 9, 1969, with the undersigned Judge presiding. The State was represented by the Honorable Herbert Small, Solicitor for the First Solicitorial District and the juveniles were represented by James E. Ferguson, II, Esq. The State, at the request of the said James E. Ferguson, II, moved that these matters, numbered 69-J-17 through 69-J-24, inclusive, be consolidated for hearing, findings and disposition. Motion allowed. The Solicitor moved that the third paragraph of the Petition in these cases, 69-J-17 through 69-J-24, inclusive, be amended. The attorney for the juveniles objected. The objection was overruled and the amendment allowed. EXCEPTION No. 1. Upon the call of the above enumerated matters for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juveniles, their parents or guardians, and witnesses should be present for the hearing. The attorney for the juveniles objected. Objection Overruled. EX-

CEPTION NO. 2. Each child was accompanied by his or her mother or grandmother.

The attorney for the juveniles moved to dismiss the petition for each juvenile on the grounds that the juvenile statutes, N. C. Gen. Stat. Section 110-21, et. seq., under which these cases are to be tried are unconstitutionally vague and overbroad, and deprive the juveniles of equal protection and due process of law. Motion denied. EXCEPTION NO. 3.

Mr. Ferguson requested a jury trial. Motion denied. EXCEPTION NO. 4.

COURT: I have stated on several occasions, and in the presence of at least some of you, that this will not be a criminal trial. This will be a Juvenile Hearing and, in no event, will any child be found to have committed a crime. Our statutes provide in part that sessions of Juvenile Court shall be held at such times and in such places within the County as the Judge shall from time to time determine.

In the hearing of any case the general public may be excluded and only such persons admitted as have a direct interest in the case. Sessions of the Court shall not be held in conjunction with any other business of the Court and children's cases shall not be heard at the same time as those against adults. The Court shall maintain a full and complete record of all cases brought before it to be known as the Juvenile Record. All records may be withheld from indiscriminate public inspection in the discretion of the Court but such record shall be open to inspection by the parents, guardians or other authorized representatives of the child concerned. No adjudication shall operate as a disqualification of any child for any public office and no child shall be denominated a criminal by reason of such adjudication nor shall any such adjudication be denominated a conviction." Our Supreme Court has stated that the express intention of this statute is that in all proceedings under its provisions the Court shall proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the Court should give such child under the circumstances

disclosed in the case. Moreover, any Order of Judgment made by the Court in the case of any child should be subject to such modification from time to time as the Court may consider to be for the welfare of the child. In other words and to summarize, this is not a criminal case but is a hearing to determine whether these children or any of them are delinquent and in need of the protection and guidance of the State.

SGT. CHARLES SMITH testified:

DIRECT EXAMINATION (By Mr. Small)

I am Sgt. Charles Smith, employed by the North Carolina Highway Patrol. On November 14, 1968, I had occasion to see Barbara Burrus, Sara Whitney, Darlene McCoy, Nina Whitney, Dorene Harris, Patricia Collins, Dollie Gibbs and Maria Harris. The first time I saw them was just prior to noon. It was just a few minutes before noon as the arrests were made at 12:05 P. M., November 14, 1968. When I saw them they were marching from the courthouse towards U. S. Highway 264 business. They were on the southern shoulder marching west, facing oncoming traffic. I observed them marching in this fashion about a mile. There were other persons in the company of these respondents. They were all marching down Highway 264 towards the courthouse. I observed the group for approximately 30 minutes. In my opinion, there were approximately 40 or 45 people in the group. All the juveniles I have referred to were taken into custody and 26 additional persons were taken into custody.

Q Were these adults? Were the other 26 between the ages of 16 and 21?

Objection. Overruled.

A There were 11 more juveniles.

By juveniles I mean persons under 16. There was no one under 21 taken into custody.

Q Can you give any reason why the remaining 6 or 7 were not taken into custody?

Objection. Overruled.

A Yes sir. They were known to be juveniles and were released.

The eight juveniles involved in this case gave us ages from 16 to 18. Patricia Collins gave the birth date 1/19/52; Barbara Burrus gave the birth date 5/5/52; Dorene Harris gave the birth date 10/15/52; Nina Whitney gave the birth date of 4/13/51; Darlene McCoy gave the birth date 1/16/54; Sara Whitney gave the birth date of 1/5/52; Dolly Gibbs gave the birth date of 7/27/51 and Maria Harris gave the birth date of 11/6/52.

After taking them into custody and placing them under arrest on the basis of the ages they gave me and prior to this hearing I made an effort to ascertain their correct date of birth.

Objection. Overruled.

Some of these came in and said they were younger than they had previously advised. Part were looked up in the Court records. The date of birth of each juvenile is as follows:

Barbara Burrus, 5/5/54; Dorene Harris, 10/15/56; Nina Whitney, 4/15/54; Sara Whitney, 1/5/57; Dolly Gibbs, 7/27/54; and Maria Harris is 14 years of age.

These eight juveniles and others marched down the street to the courthouse and walked out into the street and started playing basketball and blocked traffic. They were playing basketball in front of the courthouse on highway 264 business here in Swan Quarter. They blocked traffic at least one vehicle from each direction. The traffic came to a complete halt. There was a red truck coming west that turned around and went in an easterly direction. There was at least one other vehicle proceeding in the opposite direction. I do not recall the type of vehicle.

Q Prior to this date, had these same individuals been involved in any similar type of conduct?

Objection. Overruled. EXCEPTION NO. 5

A Yes, some had, Patricia Collins, twice; Barbara Burrus, at least one other time; Dorene Harris, at least two other times; Nina Whitney, one other time; Darlene McCoy, one other time; Sara Whitney, one other time;

Dollie Gibbs, one other time; Maria Harris, two other times.

Motion to strike. Motion denied. EXCEPTION NO. 6.

They remained in the street, blocking traffic several minutes, I can't tell exactly how many minutes. We waited until traffic came and then we made the arrests, after the traffic had stopped. While I was waiting for the traffic to come, they were in the intersection here at the courthouse playing basketball. At different times, they just blocked the westbound lane of the intersection, and later on they blocked both lanes. The lanes are paved and are 24 feet wide, a lane for traffic in each direction. The shoulder on the north side of the highway is 10 feet or so wide. The shoulder on the other side is a gas station yard. When these defendants and others were in both lanes, traffic could not go around. They were blocking both lanes of traffic, laughing, hollering and playing basketball, passing it back and forth. The two vehicles detained were only detained a brief time before I could clear the streets. I do not remember whether the occupants got out of the cars. The street was cleared so that traffic could resume its normal flow, by taking these people into custody and marching them to the jail. This was done by a squad of state troopers, under my direction. When they were taken into custody, I said something to the group.

Q What electronic aid did you use?

Objection. Overruled.

A A battery powered microphone that was necessary in order to be heard. The group was singing, clapping their hands and hollering. With the aid of the battery powered microphone, I told the group two or three times to clear the street. After I told them this, I told the group that they were under arrest for blocking traffic. I then summoned the squad of troopers. The squad was in front of the courthouse some distance away from where the group and I were standing. They remained in the center of the road blocking traffic while the squad approached, and remained there until the squad arrived. After the squad arrived, we circled the group and moved

them from the intersection to the jail. There were eight men in the squad, plus myself and Sgt. Rogers.

Q Were any members of the Sheriff's Department present at that time?

Objection. Overruled. EXCEPTION NO. 7.

A Yes sir. There was the Sheriff and two deputies. The Sheriff and his deputies did not assist, but were present if needed.

Q Had you requested them to be present or had they requested you to be present?

Objection. Overruled. EXCEPTION NO. 8.

A They had asked us.

I was first on duty in Hyde County, September 11th.

Q Other than the group of approximately 40 that participated in the activities you have described, were there any other people in the vicinity, other than law enforcement officers?

Objection. Overruled. EXCEPTION NO. 9.

A Yes. There were people in the gas station.

Q During the course of the demonstration when these juveniles involved in these cases were taken into custody, was there any statement by any in the group or any placards giving reason for which they were blocking the street or any cause for which they might be crusading?

Objection. Overruled. EXCEPTION NO. 10.

A Yes.

CROSS EXAMINATION

When the Solicitor asked me earlier whether or not any of these respondents had been involved in similar incidents, I used something to refresh my recollection. I used a list plus some warrants. I do not know whether any of them have been brought to trial. On this occasion, I only saw one basketball. The entire group was playing basketball. Sometimes they covered the entire width of the road. There were approximately 40 to 50 persons that were standing in a group, more or less in a circle. I know the relative positions of these defendants in the group. The majority of them were in the westbound lane. I am using pictures to refresh my recol-

lection on this. I am not able to identify each of these respondents in these pictures. These pictures do not reflect the entire portion of the road. They do not reflect that the entire paved portion was covered. The majority of these respondents were in the westbound lane. The ones that I can identify from this picture I cannot identify any of the respondents as to name, as to face, I can. I agree that they don't all show up on the picture. The period of time that oncoming traffic paused was very brief. I cannot tell the minutes the traffic was blocked—the one vehicle traveling west was blocked long enough that it turned around and went back in the other direction. When these respondents were arrested, they were placed under arrest for violation of the criminal law. The ones that "pre-fabricated" their ages were locked up. They were locked up for different periods of time. Bond was set in each of these cases.

REDIRECT EXAMINATION

None of these juveniles were held in custody after they gave their correct ages and this was verified.

Q It was only while you were under the mistaken impression about their ages that they were held in custody, is that correct.

Objection. Overruled. EXCEPTION NO. 11.

A Yes.

Q After the group formed in the street and so occupied the street that all traffic on both traffic lanes was blocked, did the group permit any traffic to pass until after they were placed under arrest and taken into custody?

Objection. Overruled. EXCEPTION NO. 12.

A Yes. A vehicle may have passed going west.

Q I mean after they got in the roadway.

A No sir.

Mr. Small: The State rests.

Mr. Ferguson: All of the juveniles move that the cases against them be dismissed as a nonsuit on the grounds that the juvenile statutes are unconstitutional and that they have violated no law.

COURT: Motion denied. EXCEPTION NO. 13.

We renew our motion to dismiss. Motion denied. EXCEPTION NO. 14.

The Court entered the following orders:

ORDER OF COMMITMENT AND PROBATION (Barbara Burras, No. 6-J-17)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Lillie Mae Burras—her mother—the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Fergerson II, Esq., Attorney of Record; and it having been agreed to by the said James E. Fergerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-18; 69-J-19; 69-J-20; 69-J-21; 69-J-22; 69-J-23; 69-J-24, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14 day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede traffic and did in fact stop and impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of GC 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the

State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Barbara Burras be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P. M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Sara Whitney, No. 6-J-18)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Sara Spencer—her grandmother, (Her mother was in New York and the whereabouts of her father was unknown), the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of Record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-17; 69-J-19; 69-J-20; 69-J-21; 69-J-22; 69-J-23; 69-J-24, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14th day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede traffic and did in fact stop and impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Sara Whitney be, and she is hereby committed to the custody of the Hyde County Depart-

ment of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Darlene McCoy, No. 69-J-19)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Clara McCoy, her

grandmother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of Record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-17; 69-J-18; 69-J-20; 69-J-21; 69-J-22; 69-J-23; 69-J-24; for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14th day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede traffic and did in fact stop and impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic; and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Darlene McCoy be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon

probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P. M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9 day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Nina Whitney, No. 69-J-20)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Sara Spencer, her grandmother—her mother being in New York—the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-17; 69-J-18; 69-J-19; 69-J-21; 69-J-22; 69-J-23; 69-J-24, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way preju-

dicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14 day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede traffic and did in fact stop and impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic; and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Nina Whitney be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P. M. each evening;

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9 day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Dorene Harris, No. 69-J-21)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Mellie Burras—her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-17; 69-J-18; 69-J-19; 69-J-20; 69-J-22; 69-J-23; 69-J-24; for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14th day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede traffic and did in fact stop and impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic; and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be pun-

ished by law; and it further appearing to the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent.

It is now, therefore, ORDERED, ADJUDGED and DECREED that Dorene Harris be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P. M. each evening;
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Patricia Collins, No. 69-J-22)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Mary Edna Collins—her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-17; 69-J-18; 69-J-19; 69-J-20; 69-J-21; 69-J-23; 69-J-24; for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14th day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede traffic and did in fact stop and impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic; and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Patricia Collins be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the

superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P. M. each evening;
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Dollie Gibbs, No. 69-J-23)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Shirley Gibbs—her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this

matter should be consolidated with 69-J-17; 69-J-18; 69-J-19; 69-J-20; 69-J-21; 69-J-22; 69-J-24; for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14th day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede traffic and did in fact stop and impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic; and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Dollie Gibbs be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;

2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated

agent, at least once each month at a time and place designated by said Director;

3. That said child be at her residence by 11:00 o'clock P. M. each evening;

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Maria Harris, No. 69-J-24)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Mellie Burras—her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-17; 69-J-18; 69-J-19; 69-J-20; 69-J-21; 69-J-22; 69-J-23; for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14th day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede

traffic and did in fact stop and impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic; and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Maria Harris be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P. M. each evening;
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9 day of January, 1969.

/s/ HALLETT S. WARD

To the signing and entry of the foregoing judgments the respondent juveniles object and except. EXCEPTION NO. 15.

APPEAL ENTRY

COURT: Do you wish to note any appeal?

MR. FERGUSON: Yes, and I would like 60 days in which to prepare the case on appeal.

COURT: I am afraid that this is too much time, too much time under the rules.

MR. FERGUSON: I would also like to be allowed to proceed in forma pauperis.

COURT: I am afraid that I cannot allow that simply upon your request. We should examine the statutes, however; I am willing, if I can, to allow you to proceed without an appeal bond. EXCEPTION NO. 16.

MR. FERGUSON: You might permit me to have the parents sworn and treat the testimony as an affidavit.

COURT: I am afraid that I cannot do that. EXCEPTION NO. 17. I am going to suggest that you dictate your own appeal entries in whatever fashion you deem appropriate and I will sign whatever you dictate.

MR. FERGUSON: The respondent and his or her parents or guardian in open Court, by and through his counsel, give notice of appeal to the North Carolina Court of Appeals. Each of the respondents and his or her parents or guardian moves the court for leave to proceed on the appeals in forma pauperis alleging that each respondent and his parents are indigent and unable to pay cost of appeal, and request that the State bear the expense of the cost of transcript. The juveniles are given 60 days within which to make up and serve their case on appeal upon the State. The State is allowed 30 days therefrom to make up and serve countercase or exceptions. The time for docketing the case is hereby extended ten days beyond the 90 days statutory period.

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 9,

1969, at a regularly calendared session of Juvenile Court in Hyde County.

This the ..... day of March, 1969.

/s/ HALLETT S. WARD
Judge Presiding

SUMMARY OF EVIDENCE:

IN RE: TRINA SELBY—69-J-1
DORENE HARRIS—69-3
JULIA ANNA COLLINS—69-J-4
CHERLYN WHITNEY—69-J-5
CATHERINE GIBBS—69-J-6
DEBORAH ANN COLLINS—69-J-8
MARIA HARRIS—69-J-9
EDDIE WHITLEY—69-J-10 and
ALONZO EDWARD HOLLOWAY—69-J-30

Pursuant to GS 7A-195 of the General Statutes of North Carolina and Rule 19 (g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearings. Findings of fact are contained in the attached Orders.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 9, 1969, with the undersigned Judge presiding. The State was represented by the Honorable Herbert Small, Solicitor for the First Solicitorial District and the juveniles were represented by James E. Ferguson, II, Esq. The State, at the request of the said James E. Ferguson, II, moved that these matters, numbered 69-J-1, 69-J-3, 69-J-4, 69-J-5, 69-J-5, 69-J-6, 69-J-8, 69-J-10 and 69-J-30, inclusive, be consolidated for hearing, findings and disposition. Motion

allowed. The solicitor moved that the third paragraph of the petition in these cases 69-J-1, 69-J-3, 69-J-4, 69-J-5, 69-J-6, 69-J-8, 69-J-9, 69-J-10 and 69-J-30, inclusive, be amended. The attorney for the juveniles objected. The objection was overruled and the amendment allowed. (EXCEPTION NO. 18). Upon the call of the above enumerated matters for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juveniles, their parents or guardians, and witnesses should be present for the hearing. The attorney for the juveniles objected. Objection overruled. (EXCEPTION NO. 19). Each child was accompanied by his or her mother or grandmother.

The attorney for the juveniles moved to dismiss the Petition for each juvenile on the grounds that the juvenile statutes of North Carolina, N.C. Gen. Stat. Section 110-21, et seq., under which these cases are to be tried are unconstitutionally vague and overbroad, and deprive the juveniles of equal protection and due process of law. Motion denied. (EXCEPTION NO. 20).

Mr. Ferguson requested a jury trial. Motion denied. (EXCEPTION NO. 21).

COURT: As I have advised previously, this is a session of Juvenile Court and is not a criminal hearing. That is why I have excluded the general public. I want to read to you from our General Statutes that provide in part as follows: that sessions of Juvenile Court shall be held at such times and in such places within the County as the Judge shall from time to time determine. In the hearing of any case, the general public may be excluded and only such persons admitted as have a direct interest in the case. Sessions of the Court shall not be held in conjunction with any other business of the Court, and children's cases shall not be heard at the same time as those against adults. The Court shall maintain a full and complete record of all cases brought before it, to be known as the Juvenile Record. All records may be withheld from indiscriminate public inspection in the discretion of the Court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child

concerned. No adjudication shall operate as a disqualification of any child for any public office and no child shall be denominated a criminal by reason of such adjudication, nor shall any such adjudication be denominated a conviction. Our Supreme Court has stated that the express intention of this statute is that in all proceedings under its provisions, the Court shall proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the court should give such child under the circumstances disclosed in the case. Moreover, any Order or Judgment made by the Court in the case of any child should be subject to such modification from time to time as the Court may consider to be for the welfare of the child. In other words, and to summarize, this is not a criminal case, but is a hearing to determine whether these children or any of them are delinquent and in need of the protection and guidance of the state.

SERGEANT CHARLES SMITH

DIRECT EXAMINATION (By Mr. Small)

I am Sgt. Charles Smith and I am employed by the North Carolina State Highway Patrol. I was in Hyde County on November 12, 1968. At that time I had the opportunity to see Trina Selby, Dorene Harris, Julia Anna Collins, Cherlyn Whitney, Katherine Gibbs, Debra Ann Collins, Maria Harris, Eddie Whitley and Alonzo Edward Holloway. I first saw them before noon on U. S. 264 business by-pass. It was approximately 11:00 A.M. Highway 264 business is here in Swan Quarter. I observed this group marching toward the courthouse at an earlier time. When I first saw them, they were about a mile from the courthouse. They were marching in a westward direction on the left shoulder facing traffic. A few of them were on the pavement. The group consisted of twenty-six persons plus. They continued to march on the lefthand side of the road until they arrived in Swan

Quarter. When they arrived in Swan Quarter, they went to the courthouse where they sang and chanted. This was in front of the parking lot, on the sidewalk and the courthouse steps. This continued, I would say, fifteen or twenty minutes. Then they started marching back east until they reached a point near the church. That is a brick church, I believe the Methodist Church. It is a couple of blocks from the courthouse.

When they got to a point in the vicinity of the Church, they walked into the roadway, about twenty-six in the roadway. When they got in the roadway, they milled about—just stood there. They stood on the highway several minutes. I don't remember just how long. The traffic was blocked from both directions before the arrests were made. My car was blocked and the patrol car behind my car was blocked. At that point the paved portion of the highway is about twenty-one feet wide. There is a lane of travel in each direction and shoulders on each side of the paved portion of the highway. The shoulders are about twelve feet or so wide.

When this group occupied the highway, traffic proceeding west could not pass the group without doing personal injury to them. Traffic could not proceed east without doing personal injury to them. Traffic in each direction stopped while the group was dispersed across the highway. I would say traffic remained held up about ten minutes. After my vehicle came to rest, I attempted to have these people move from the traveled portion of the highway with a loud speaker. I personally asked them to get off the highway. They did not move. I used a loud speaker to be heard.

Q Was there any noise out there to prevent you from being heard if you spoke in a normal voice?

OBJECTION—OVERRULED (EXCEPTION NO. 22)

A Yes, sir.

The noise consisted of singing, shouting and clapping hands.

Q Was there singing, clapping hands and shouting by the group of nine juveniles before the Court now?

OBJECTION—OVERRULED. (EXCEPTION NO. 23)

A I will have to say that they were in the group that was singing, shouting and clapping hands. So far as I can say, most of the group participated in singing, shouting and clapping of hands. There were twenty-six plus in the group and twenty-six were taken into custody. I can't say they were all clapping their hands.

Q The majority of them?

OBJECTION—OVERRULED (EXCEPTION NO. 24)

A Yes.

They were singing and chanting and the nine juveniles were in the group at that time. I requested them to clear the highway for traffic two or three times. They did not clear the highway until they were placed under arrest. I signaled the troopers in placing them under arrest. The troopers were at the courthouse about two blocks away. The troopers traveled to the scene by patrol car. They got in the patrol car after I signaled for them and drove up where I was. They got out of the patrol car. The squad was formed and walked the people off the highway. The squad withdrew them to the opposite shoulder of the highway.

Q When they were marched across to one shoulder, did you make any statement to them about keeping the highway clear?

OBJECTION—OVERRULED (EXCEPTION NO. 25)

A Yes. I informed them they would be arrested if they continued to block traffic.

There were vehicles blocked from both directions. I don't know how many. They were detained a matter of minutes. When the group was placed under arrest I told them they were being arrested for blocking traffic. The squad moved in and placed the people in patrol cars and took them to the courthouse. I did not have any difficulty with the ones I put in my car. No trouble with any of these nine before the Court. Others in the group did give trouble. There were twenty-six arrested at the time. All of them said they were sixteen or over. Julia Collins said

she was born 3/15/52. Debra Collins said she was born 4/11/52. Dorene Harris said she was born 2/15/52. Cherlyn Whitney said she was born 9/19/52. Maria Harris said she was born 11/5/52. Trina Selby said she was born 2/13/51. Katherine Gibbs said she was born 8/1/51. Eddie Whitley said he was born 9/11/52. Alonzo Holloway said he was born 9/13/52. On the basis of what they told me, I placed them under arrest for violation of General Statute 20-174.1. I later ascertained their correct ages. Julia Collins' birth date was 12/22/54; Dorene Harris 10/15/56; Maria Harris was 12/17/54; Debra Collins 2/25/57; Eddie Whitley 2/25/54. I do not have the ages of Trina Selby, Katherine Gibbs and Alonzo Holloway.

CROSS EXAMINATION (By James E. Ferguson, II):

When I first saw these nine juveniles, they were on their way through town. I was in close proximity to the marchers, I was in front of some, beside them and behind them. My mode of travel was by patrol car. I had been seeing the faces of these juveniles many times over the past several weeks. I was familiar with the names. So far as putting the names with the faces, I could not do it to all of them now. At the first time I saw these individuals marching toward town, I could not identify these individuals as being in the group. At the time they came into town they did not block traffic anywhere. They came here to the courthouse and sang and chanted for a while. They did not block traffic at that time. They proceeded back out of town about two blocks and were still in town. They were headed east. They proceeded some distance without blocking any traffic. I was with them at the time they proceeded east after they left the courthouse. I was riding along in my patrol car. It was down close to the Methodist Church when some of them went out on the paved portion of the road. I didn't say how many people there were all together. I said there were twenty-six taken into custody. These twenty-six dropped off the rear end of the march. I don't know how many were participating in the march. I wouldn't venture an opinion. They were all in a body until this group

walked into the street. Part of the others stopped on the shouder and part of them proceeded east. While these twenty-six people went in the road, they just milled about in a body. I do not know the relative position of each of these nine juveniles in that group.

I could say that each of these respondents and everyone was in a lane of traffic. I don't know where they were in relation to the shoulder or the center line, but they were on the hard surface of the road in this group of twenty-six. When I arrested these nine juveniles, I took them into custody. I brought criminal charges against them. I do not know how long they remained in custody. Bail was set, I said that my squad marched them off the road more than once. No one resisted being marched off the road. I said I marched them off the road more than once. I do not know how many times. I can't determine whether everybody who was marched off came back on the road. Each time they were marched off the road I can't say there was oncoming traffic besides my patrol car. At the time the arrests were made, traffic was blocked both ways. At the time the arrests were made, I was out of my patrol car and had been on my feet several minutes with the rest of the men. My patrol car was sitting on the right lane headed east. Regardless of what the persons in the road were doing, any oncoming traffic would have been blocked by my car. I got out of my patrol car one time and marched them off the highway and they walked out in front of my vehicle and I got out then and stayed out until the arrests were made and then I drove back to the courthouse. I used a battery powered loud speaker to address the group. They were singing and chanting and there was noise.

Q Do you recall what songs they were singing and chanting?

A I heard so many.

Q Were they freedom songs?

OBJECTION—SUSTAINED

I do not know why these people were out on the road. I stated that there was a large crowd of persons marching. I have an opinion why they were marching. It is

to protest the centralization of the Hyde County Schools. At the time I made the arrests and at no other time did I have any trouble with the group.

REDIRECT EXAMINATION (By Mr. Small)

The group had been demonstrating over consolidation of schools almost continuously since September 11th.

Q During the course of these demonstrations, did you take these nine juveniles into custody on other occasions?

OBJECTION—OVERRULED. (EXCEPTION NO. 26)

A Yes. I took Julia Collins, two more warrants; Dorene Harris, two more, Cherlyn Whitney, one more; Maria, two more; Debra Collins, two more; Trina Selby, two more; Katherine Gibbs, one more; Eddie Whitley, one more; and Alonzo Holloway, two more.

MR. FERGUSON: Motion to strike (EXCEPTION NO. 27). MOTION DENIED.

RECROSS EXAMINATION (By Mr. Ferguson):

The race of all persons participating in the demonstration was colored.

Q To your knowledge, didn't the demonstration grow out of the fact black people in Hyde County felt that the manner of consolidation was discriminating against them?

OBJECTION—SUSTAINED.

MR. SMALL: The State rests.

MR. FERGUSON: The juveniles, and all of them, move to dismiss as of nonsuit on the grounds stated and argued in the first cases tried this morning.

COURT: Motion denied. (EXCEPTION NO. 28)

MR. FERGUSON: Exception.

MR. FERGUSON: There is no evidence for any of the juveniles. We renew our motion to dismiss. Motion denied. (EXCEPTION NO. 29)

The Court entered the following orders.

ORDER OF COMMITMENT AND PROBATION (Trina Selby, No. 69-J-1)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Bessie Matthews, aunt, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson II, and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-3; 69-J-4; 69-J-5; 69-J-6; 69-J-8; 69-J-9; 69-J-10; 69-J-30, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, the said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby, stop and impede traffic; and did persist in stopping and impeding traffic after being directed to remove from said highway—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Trina Selby be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suit-

able institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsist with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for over 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her resident by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Dorene Harris, No. 69-J-3)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Mellie Burras, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II,

Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson II, and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-1; 69-J-4; 69-J-5; 69-J-6; 69-J-8; 69-J-9; 69-J-10; 69-J-30; for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, then said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby stop and impede traffic; and did persist in stopping and impeding traffic after being directed to remove from said highway—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Dorene Harris be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;

2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;

3. That said child be at her residence by 11:00 o'clock P.M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Julia Anna Collins, No. 69-J-4)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Pencie Collins, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson II, and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-1; 69-J-3; 69-J-5; 69-J-6; 69-J-8; 69-J-9; 69-J-10; 69-J-30, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Stat-

utes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, the said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby, stop and impede traffic; and did persist in stopping and impeding traffic after being directed to move from said highway —said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Julia Anna Collins be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Cherlyn Whitney, No. 69-J-5)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Janie B. Whitney, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson II, and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-1; 69-J-3; 69-J-4; 69-J-6; 69-J-8; 69-J-9; 69-J-10; 69-J-30, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, the said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby, stop and impede traffic; and did persist in stopping and impeding traffic after being directed to move from said highway—said acts having been wilfully and inten-

tionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Cherlyn Whitney be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91); after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Catherine Gibbs, No. 69-J-6)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Shirley Gibbs, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson II, and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-1; 69-J-3; 60-J-4; 69-J-5; 69-J-8; 69-J-9; 69-J-10; 69-J-30, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, the said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby, stop and impede traffic; and did persist in stopping and impeding traffic after being directed to move from said highway—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Catherine Gibbs be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department

in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said instituton for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Deborah Ann Collins, No. 69-J-8)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Pencie Collins, her mother, the nature of this proceeding; as will appear in

the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson II, and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-1; 69-J-3; 69-J-4; 69-J-5; 69-J-6; 69-J-9; 69-J-10; 69-J-30, for hearing, findings and disposition and said attorneys having further agreed that such attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, the said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby, stop and impede traffic; and did persist in stopping and impeding traffic after being directed to move from said highway—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Deborah Ann Collins be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction of the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended

and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Maria Harris, No. 69-J-9)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Mellie Burras, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-1; 69-J-3; 69-J-4; 69-J-5; 69-J-6; 69-J-8; 69-J-10; 69-J-30, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does

not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, the said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby, stop and impede traffic; and did persist in stopping and impeding traffic after being directed to move from said highway—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Maria Harris be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Eddie Whitley, No. 69-J-10)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Ina Farrow, mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Fergerson II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-1; 69-J-3; 69-J-4; 69-J-5; 69-J-6; 69-J-8; 69-J-9; 69-J-10; 69-J-30, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit of intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, the said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby, stop and impede traffic; and did persist in stopping and impeding traffic after being directed to move from said highway—said acts having been wilfully and inten-

tionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Eddie Whitley be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said Department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at his residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Alonzo Edward Holloway, No. 69-J-30)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to John Holloway, his father, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-1; 69-J-3; 69-J-4; 69-J-5; 69-J-6; 69-J-8; 69-J-9; 69-J-10; 69-J-30, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12th day of November, 1968, the said child did in the company of others go upon a main traveled highway in Swan Quarter and did remain upon the said traveled portion of said highway and did, thereby, stop and impede traffic; and did, thereby, stop and impede traffic; and did persist in stopping and impeding traffic after being directed to move from said highway—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Alonzo Edward Holloway be, and he is hereby committed to the custody of the Hyde County

Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at his residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

To the signing and entry of the foregoing judgments the respondent juveniles OBJECT and EXCEPT. EXCEPTION #30.

APPEAL ENTRY

THE COURT: I presume you wish to appeal from these orders also?

MR. FERGUSON: Yes, I wish to object to the signing and entry of the Order and renew the motions and objections I made in cases 69-J-17 through 69-J-24.

THE COURT: I will do the same in this group of cases as I did before and will enter a copy of your appeal entries here.

SUBMISSION OF PROCEEDINGS

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 9, 1969, at a regularly calendared session of Juvenile Court in Hyde County, North Carolina.

This the ..... day of ....., 1969.

/s/ HALLETT S. WARD
Judge Presiding

SUMMARY OF EVIDENCE IN RE: EVELYN EVANGELINE GIBBS—69-J-11; ROSE MARY COLLINS—69-J-12; DEBRA ANN COLLINS—69-J-13; CATHERINE GIBBS—69-J-14; JULIE ANNA COLLINS—69-J-16; ELVIRA VASHTI WESTON—69-J-28; AND SUDIE BELL McCULLOR, 69-J-29

Pursuant to G.S. 7A-195 of the General Statutes of North Carolina and Rule 19(g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed juvenile hearings. Findings of fact are contained in the attached orders.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 9, 1969,

with the undersigned Judge presiding. The State was represented by the Honorable Herbert Small, Solicitor for the First Solicitorial District and the juveniles were represented by James E. Ferguson II, Esq., The State, at the request of the said James E. Ferguson, II, moved that these matters, numbered 69-J-11, 69-J-12, 69-J-13, 69-J-14, 69-J-16, 69-J-28 and 69-J-29, inclusive, be amended. The attorney for the juveniles objected. The objection was overruled and the amendment allowed. EXCEPTION #31.

Upon the call of the above enumerated matters for hearing and disposition, there was no one present in the hearing room except the juveniles, their mothers, and officers of the court.

The attorney for the juveniles moved to dismiss the Petition for each juvenile on the grounds that the juvenile statutes, N. C. Gen. Stat. Section 110-21, et seq., under which these cases are to be tried are unconstitutionally vague and overbroad, and deprive the juveniles of equal protection and due process of law. Motion denied. EXCEPTION #32.

Mr. Ferguson requested a jury trial. Request denied. EXCEPTION #33.

THE COURT: I want to read to you from our General Statutes and a Supreme Court decision: Our statutes provide in part that sessions of Juvenile Court shall be held at such times and in such places within the county as the Judge shall from time to time determine.

In the hearing of any case, the general public may be excluded and only such persons admitted as have a direct interest in the case. Sessions of the Court shall not be held in conjunction with any other business of the Court and children's cases shall not be heard at the same time as those against adults. The Court shall maintain a full and complete record of all cases brought before it; to be known as the Juvenile Record. All records may be withheld from indiscriminate public inspection in the discretion of the Court, but such record shall be open to inspection by parents, guardians, or other authorized representatives of the child concerned. No adjudication shall operate as a disqualification of any child for any public

office, and no child shall be denominated a criminal by reason of such adjudication, nor shall any such adjudication be denominated a conviction. Our Supreme Court has stated that the express intention of this statute is that in all proceedings under its provisions, the Court shall proceed upon a theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the Court should give such a child under the circumstances disclosed in the case. Moreover, any Order or Judgment made by the Court in the case of any child should be subject to such modification from time to time as the Court may consider to be for the welfare of the child. In other words, and to summarize, this is not a criminal case, but is a hearing to determine whether these children or any or them are delinquent and in need of the protection and guidance of the State.

SERGEANT WILLIE ROGERS testified

DIRECT EXAMINATION (By Mr. Herbert Small)

I am Sergeant Willie Rogers employed by the North Carolina Highway Patrol. I was in Hyde County on November 13, 1968. On that day I had an opportunity to see Evelyn Evangeline Gibbs, Rosemary Collins, Debra Ann Collins, Catherine Ann Gibbs, Julie Anna Collins, Elvira Vashti Weston and Sudie Bell McCullor. I first saw them in front of the Courthouse. It was about 11:00 a.m. These seven juveniles were together at that time. They were in the company of others; there was a total of 21, 9 males and 12 females. At the time I first observed them the 7 juveniles in the company of a total group of 21 were circling in front of the Courthouse in the street carrying chickens. They were holding them out in front of their arms. All of the juveniles did not have them although they were participating. All were not carrying chickens. There were other juveniles in the group: Rosemary Whitney, Janice Marie Whitney, Nicole Green, Tyrone Dudley, and Loretta Joyce Swain. The

rest of them were above juvenile age. They remained at that location about 5 or 10 minutes. They left and went to the intersection here, 264 with the road at the Courthouse intersection. When they got to 264 they went back into a circle almost in front of the Esso Station, going around in a circle, going from the shoulder to the edge of the station yard, in a complete circle. Both traffic lanes were completely blocked; the ones that had chickens in the beginning were still carrying them. As I recall they did not block any traffic in front of the Courthouse.

One vehicle was coming from the South coming North and backed up and turned and went down the side street, and went around the block. Here at the intersection there was traffic coming in both directions. The traveled portion of the highway is approximately 18 feet wide. There is a narrow shoulder on the north side and no shoulder on the south side. The south side is the driveway to the service station. When the group was circling in front of the service station there were 21 in the group. These juveniles involved in this case were circling in front of the service station. They were singing some of their songs and walking in a circle with the chickens. They were out at least 5 minutes, until the vehicular traffic began to combine and they were advised to get off the road for the traffic. Sergeant Smith advised them with a battery powered yellow microphone, the loud speaker type. He advised them that they were blocking and would be arrested if they did not clear the road, and asked them to get off onto the shoulder. They went off and came back. He advised them again. They went back to the shoulder and then back to the road again. After the third time the whole group was arrested. Traffic had to stop while they were in the road. When they got off the road the first time we had a squad, a line formation that walked in the direction of the participants and they got off on the shoulder. There was no bodily contact. Then the troopers withdrew.

Just as soon as the troopers withdrew the group came back on the paved portion of the highway like a seesaw. At one point when the troopers advanced and the participants withdrew vehicular traffic was able to come by;

after that there wasn't enough time. They remained stopped when they came back the last time I don't recall how many vehicles were stopped, but I do recall there was at least one in each direction. The vehicle on the east end was the local ambulance or rescue squad. It stopped for this group. I would say it remained stopped 5 to 10 minutes. These vehicles that stopped could not get through without striking or doing personal injury or coming into contact with the participants. The entire group of 21 was arrested on the basis of the information that we received. Out of the 9 males, 7 said they were 16 and above. Out of the twelve girls taken into custody only 1 said she was below 16 years of age. She was Loretta Joyce Swain. Debra Ann Collins gave the age of 16 and a birth date of 4/11/52; Julia Anna Collins gave the age of 16 and a birth date 3/15/52; Catherine Ann Gibbs gave the age of 17 and a birth date 8/1/51; Evelyn Evangeline Gibbs gave the age of 16 and a birth date 4/20/52; Elvira Weston gave the age of 16 and a date of birth of 9/7/52; Sudie Bell McCullor gave the date of birth as 8/6/52; Rosemary Collins gave an age of 17 and a date of birth as 9/25/51. I later ascertained their correct ages. We got this from the birth records when we could.

Debra Ann Collins 2/25/57; Julia Anna Collins, 14, birth date 12/22/54; Catherine Ann Gibbs, 15; I don't have her date of birth. Evelyn Evangeline Gibbs is 12; her date of birth is 3/21/56; Elvira Weston is 14 years of age; I do not have her correct date of birth; Rosemary Collins, age 14, birth date 9/25/54; Sudie Bell McCullor, 14 years old, birth date 8/6/54.

Q. Sergeant Rogers can you tell us if these respondents participated in acts during a different period similar to this? OBJECTION. OVERRULED. EXCEPTION #34

A. Yes.

Q. Sergeant Rogers, were you present at any other time when any of the juveniles whose cases are now pending were in the street? OBJECTION. OVERRULED. EXCEPTION #35.

A. I was.

Q I asked you whether or not they were told on those occasions to remove themselves from the street or stop blocking or some similar type statement? OBJECTION. OVERRULED. EXCEPTION #36.

A. They were. They were told by Sergeant Smith, the Clerk of Court, and myself. MOTION TO STRIKE. MOTION DENIED. EXCEPTION #37.

Q. Were they alone or in the company of other persons on those occasions? OBJECTION. OVERRULED. EXCEPTION #38.

A. No one else was involved when the Clerk of Court told them. They were there in his office. Debra Ann Collins, Julia Anna Collins and Catherine Ann Gibbs were in the Clerk's office prior to this.

Q. Which ones of these juveniles were present on the other occasions when Sergeant Smith told them this? OBJECTION. OVERRULED. EXCEPTION #39.

A. Sergeant Smith and I were together when all those others took place. The three I just named and the other four were advised and they were taken into custody on the day prior to this and were released. MOTION TO STRIKE. MOTION DENIED. EXCEPTION #40.

CROSS EXAMINATION (By Mr. Ferguson)

When I first saw this group of people I was inside the Courthouse corridor and the participants were directly in front of the Courthouse. At first I was only able to identify a portion of the participants, but I then went out on the street where I mingled with the group. At that time there was no traffic approaching from the north, and one from the south. The one from the south did not pass; it stopped at the point where the group was. The closest point this car came to the group was approximately 150 to 200 feet. They proceeded from the first point at the Courthouse to the intersection at 264. I followed them once they got to 264. They proceeded down to the Esso Station, adjacent to the intersection. At the station there is no shoulder on the south portion of the road. In order for one to pass there he would necessarily have to walk on the paved portion or on pri-

vate property. Traffic approached this group when they were at the intersection of the highway 264. It was impossible for any vehicle to attempt to go around the person there. None made an attempt to go around. Some of them had chickens; I remember some who had chickens. All of them did not have chickens. There were 21 people for about 10 chickens. At first they took the chickens to jail with them. There they put them in boxes outside the jail, and then returned them to the owner, I presume. They never let the chickens go while they were in the road. I can state where Evelyn Gibbs was in the road. She was in no one place, she was constantly on the move. Rosemary Collins was moving around in a circle. They were all moving around in a circle on the traveled portion of the road. They did not leave the pavement from time to time to come back because there were two vehicles there. They walked next to the vehicles and then across the pavement.

The vehicles that were parked on the side were completely off the road. They might have touched the public way but were not up on it. When the troopers got directly in front of the persons in the road they would go to the side. They were not off the road 10 seconds. It is not necessarily true that any car that followed the troopers down the road could have passed because every time the troopers got them to the edge they would come back into the road. I stated that an ambulance was among the traffic that stopped. It did not have its light flashing or its siren on. It gave no indication whatsoever that there might have been an emergency. The ones that didn't have chickens were singing and clapping. I don't remember any particular songs but it was one of the songs I have heard since September. It is my understanding that it was some sort of protest. I don't know what they were protesting exactly.

REDIRECT EXAMINATION

These protests have been going on since September 11 between September 11 and November 13 they marched pratically every day.

Q. Did they demonstrate in the streets on the other days that you saw them? OBJECTION. OVERRULED. EXCEPTION #41.

A. Yes. Three of this particular group were in a demonstration the day prior to this in the street.

SERGEANT CHARLES SMITH tendered by the State for the purpose of corroboration.

MR. FERGUSON: No questions.

MR. SMALL: THE STATE RESTS.

PROCEEDINGS

MR. FERGUSON: The juveniles, and all of them, move to dismiss on the same grounds and for the same reasons as advised this morning.

THE COURT: MOTION DENIED. EXCEPTION #42.

MR. FERGUSON: There will be no evidence for any of the juveniles and we renew our Motion to Dismiss.

THE COURT: MOTION DENIED. EXCEPTION #43. The following Orders are entered:

ORDER OF COMMITMENT AND PROBATION (Evelyn Evangeline Gibbs, No. 69-J-11)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Ada Pearl Gibbs, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and

Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-12; 69-J-13; 69-J-14; 69-J-16; 69-J-28; and 69-J-29, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 13th day of November, 1968, the said child did in the company of others go upon the traveled portion of a main highway in Swan Quarter, N. C., and did block and impede traffic, and after being removed from said traveled portion of said highway, did return and block and impede traffic—all said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Evelyn Evangeline Gibbs be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;

2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;

3. That said child be at her residence by 11:00 o'clock P.M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Rose Mary Collins, No. 69-J-12)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Doris Weston, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-11; 69-J-13; 69-J-14; [illegible]-16; 69-J-28; 69-J-29, for hearing, findings and disposition; and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 13th day of November, 1968, the said child did in

the company of others go upon the traveled portion of a main highway in Swan Quarter, N. C., and did block and impede traffic, and after being removed from said traveled portion of said highway, did return and block and impede traffic—all said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Rose Mary Collins, be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Debra Ann Collins, No. 69-J-13)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Pencie Collins, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-11; 69-J-12; 69-J-14; 69-J-16; 69-J-28; 69-J-29, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 13th day of November, 1968, the said child did in the company of others go upon the traveled portion of a main highway in Swan Quarter, N. C., and did block and impede traffic, and after being removed from said traveled portion of said highway, did return and block and impede traffic—all said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being

satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Debra Ann Collins be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Catherine Gibbs, No. 69-J-14)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Shirley Gibbs, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-11; 69-J-12; 69-J-13; 69-J-16; 69-J-28; 69-J-29, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 13th day of November, 1968, the said child did in the company of others go upon the traveled portion of a main highway in Swan Quarter, N. C., and did block and impede traffic, and after being removed from said traveled portion of said highway, did return and block and impede traffic—all said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Catherine Gibbs be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department

in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Julie Anna Collins, No. 69-J-16)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Pencie Collins, her mother, the nature of this proceeding; as will appear in

the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-11; 69-J-12; 69-J-13; 69-J-14; 69-J-28; 69-J-29, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 13th day of November, 1968, the said child did in the company of others go upon the traveled portion of a main highway in Swan Quarter, N. C., and did block and impede traffic and after being removed from said traveled portion of said highway, did return and block and impede traffic—all said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Julie Anna Collins be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Elvira Vashti Weston, No. 69-J-28)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Victoria Weston, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-11; 69-J-12; 69-J-13; 69-J-14; 69-J-16; 69-J-29, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the

Court, and the Court finding as a fact, that on or about the 13th day of November, 1968, the said child did in the company of others go upon the traveled portion of a main highway in Swan Quarter, N. C., and did block and impede traffic and after being removed from said traveled portion of said highway, did return and block and impede traffic—all said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Elvira Vashti Weston be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Sudie Bell McCullor, No. 69-J-29)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Martha McCullor, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-11; 69-J-12; 69-J-13; 69-J-14; 69-J-16; 69-J-28, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 13th day of November, 1968, the said child did in the company of others go upon the traveled portion of a main highway in Swan Quarter, N. C., and did block and impede traffic and after being removed from said traveled portion of said highway, did return and block and impede traffic—all said acts having been wilfully and intentionally done and designed to impede traffic,

and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Sudie Bell McCullor be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD

To the signing and entry of the foregoing judgments the respondent juveniles object and except. EXCEPTION #44.

APPEAL ENTRY

THE COURT: I assume you wish to appeal as in the past?

MR. FERGUSON: Yes, I wish to appeal in each case in forma pauperis for the reasons expressed this morning.

THE COURT: I have suggested that you file affidavits and none have been filed. I allowed you to dictate your appeal entries and I will have them reproduced here.

SUBMISSION OF PROCEEDINGS

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 9, 1969, at a regularly calendared session of Juvenile Court in Hyde County.

This ..... day of ....., 1969

/s/ HALLETT S. WARD
Judge Presiding

SUMMARY OF EVIDENCE IN RE: BARBARA BURRAS, 68-J-4; WILLIAM BLOUNT, 68-J-5; NEKOLA GREEN, 68-J-6; SHARON HARRIS, 68-J-7; SARAH ANNETTE WHITNEY, 68-J-8; WALTER ANTHONY GREEN, 68-J-9; DESSIE HARRIS, 68-J-10; EVELYN GIBBS, 68-J-11; RONNIE LEE TOPPING, 68-J-12; TYRONE DUDLEY, 68-J-13; THERESA BLOUNT, 68-J-14; LINDA SUE GIBBS, 68-J-15; AND PATRICIA COLLINS, 69-J-27.

Pursuant to G.S. 7A-195 of the General Statutes of North Carolina and Rule 19(g) of Rules of Practice in

the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearings. Findings of fact are contained in the attached Orders.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 10, 1969, with the undersigned judge presiding. The State was represented by the Honorable Herbert Small, Solicitor for the First Solicitorial District and the juveniles were represented by James E. Ferguson, II, Esq. The State, at the request of the said James E. Ferguson, II, moved that these matters, numbered 68-J-4 through 68-J-15, inclusive, and 69-J-27, be consolidated for hearing, findings and disposition. Motion allowed. The Solicitor moved that the third paragraph of the Petition in these cases, 68-J-4 through 68-J-15, inclusive, and 69-J-27, be amended. The attorney for the juveniles objected. The objection was overruled and the amendment allowed. EXCEPTION #45. Upon the call of the above enumerated matters for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juveniles, their parents or guardians, and witnesses should be present for the hearing. The attorney for the juveniles objected. Objection overruled. EXCEPTION #46. Each child was accompanied by his or her mother or grandmother. The attorney for the juveniles moved to dismiss the petition for each juvenile on the grounds that the juvenile statutes, North Carolina Gen. Stat. Sec. 110-21, et seq., under which these cases are to be tried, are unconstitutionally vague and overbroad and deprives the juveniles of equal protection and due process of law. Motion denied. EXCEPTION #47. Mr. Ferguson requested trial by jury. Motion denied. EXCEPTION #48.

THE COURT: As I stated several times yesterday, and I know some of you were present then, that this is not a criminal trial and I want to read you the following: Our statutes provide in part that sessions of Juve-

nile Court shall be held at such times and in such places within the County as the Judge shall from time to time determine.

In the hearing of any case, the general public may be excluded and only such persons admitted as have a direct interest in the case. Sessions of the Court shall not be held in conjunction with any other business of the Court and children's cases shall not be heard at the same time as those against adults. The Court shall maintain a full and complete record of all cases brought before it, to be known as the Juvenile Record. All records may be withheld from indiscriminate public inspection in the discretion of the Court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child concerned. No adjudication shall operate as a disqualification of any child for any public office and no child shall be denominated a criminal by reason of such adjudication, nor shall any such adjudication be denominated a conviction. Our Supreme Court has stated that the express intention of this statute is that in all proceedings under its provisions, the Court shall proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the Court should give such child under the circumstances disclosed in the case. Moreover, any Order or Judgment made by the Court in the case of any child should be subject to such modification from time to time as the Court may consider to be for the welfare of the child. In other words, and to summarize, this is not a criminal case, but is a hearing to determine whether these children or any of them are delinquent and in need of the protection and guidance of the State.

SGT. WILLIE ROGERS testified:

DIRECT EXAMINATION (By Mr. Small)

I am Sgt. Willie Rogers, employed by the North Carolina Highway Patrol, and I was so employed on December 6, 1968. On that date, I was in Hyde County and I had an opportunity to see Barbara Burras, William Blount, Nekola Green, Sharon Harris, Sarah Annette Whitney, Walter Anthony Green, Dessie Harris, Evelyn Gibbs, Ronnie Lee Topping, Tyrone Dudley, Theresa Blount, Linda Sue Gibbs and Patricia Collins. I first saw them at approximately 3:00 o'clock p.m. They were in the company of others in front of the courthouse on the steps and on the sidewalk in front of the main door entering the courthouse. There were approximately 40 to 45 in the whole group. When they came to the door, I advised the leader of the group that they were not to block the entrance of the courthouse. Some stepped off to the side, but others were milling around the door.

I advised them several times not to block the entrance. Some left and went down to the corner of the street. I mean by the corner, U.S. 264 Business. They were all the way across the street. Some of the group was on the shoulder at that time. They were down in front of the abandoned Sinclair Station and were just milling around, some on the pavement and some on the shoulder. This was on highway 264, Business, that runs through Swan Quarter. The highway has two lanes, one west and one east and the paved portion is approximately 18 feet wide. In sections there is a shoulder on each side of the road. The north shoulder where the people were standing was approximately 8 or 10 feet wide; the south shoulder is a driveway used for parking.

At the time they marched to the intersection of the Sinclair Station, they blocked the highway. They milled in the stret and were not in one spot. They were a very disorderly group. By that I mean that they were not organized. Some of them were carrying signs or posters about 2 to 2½ feet. They were out in the street but were not blocking traffic. At that point, no traffic had

attempted to come through. I warned them not to block traffic and stated that if they did, they would be subject to arrest. I was within speaking distance. Some got back on the shoulder and some remained out in the traveled part of the highway. At this time, traffic was beginning to come from the west. The traffic came up and stopped in the right hand lane. There were persons in the right hand lane blocking the normal course of travel of the car that stopped. At this time there were about 40 to 45. Some were on the pavement and some on the shoulder. For the second time, I advised them to get off. They did not get off. Another car was coming from east to west. That car stopped. I advised the group that they were under arrest for blocking the normal flow of traffic. The second time I advised them to get off the pavement, some got off and 29 remained.

The juveniles in this group remained on the road. The remaining 29, including these 13 juveniles, blocked the traveled portion of the highway in both directions. The car that was coming from the west proceeded east and was blocked at least 5 minutes. The one proceeding in the opposite direction was blocked a little less than 5 minutes. A total of 29 persons was taken into custody for standing in the traveled portion of the highway. Fifteen of these were juveniles.

This morning Janice Marie Whitney was found to be 16. She was thought at first to be a juvenile. The entire group of 29 who remained on the traveled portion of the highway were taken into custody. The juveniles whose names were just read out gave their age or date of birth. Two or three gave an incorrect date of birth on this occasion. One was Linda Gibbs, who said she was 16. I later established that her correct age was 15. Her correct date of birth is 12/26/53. Theresa Blount gave her age as 16. She gave her date of birth as 5/12/52, but this was corrected to 5/12/53. Two others gave an incorrect date of birth. This group of 40 to 35 people remained in a body assembled together from the time they first appeared at the courthouse until they broke up and 29 remained on the highway blocking traffic and the others stepped aside on the shoulder. The group

went the same way, as a body at the time. When they appeared at the courthouse, they did not make any statement to me about the purpose for which they were assembled except for one. He said he came to get arrested.

Q. Was there any apparent spokesman for the group? OBJECTION. OVERRULED. EXCEPTION #49.

A. Yes, there was.

Q. What age? OBJECTION. OVERRULED. EXCEPTION #50.

A. 25.

Q. Who was it? OBJECTION. OVERRULED. EXCEPTION #51.

A. Allen Lloyd Long.

Q. I ask you whether he was arrested along with the others and the juveniles, or did he step on the side of the road. OBJECTION. OVERRULED. EXCEPTION #52.

A. He was arrested.

Q. When the group moved from one point in front of the courthouse, down the highway to the intersection, what if anything did he do to direct them or lead them to make their various moves. OBJECTION. OVERRULED. EXCEPTION #53.

A. Everything that Long would tell this group to do, they did, up to the point where I last told them to get off on the shoulder. Some of them did get off.

Q. Specifically, if you recall, what did he tell the group to do and what did they do upon being told? OBJECTION. OVERRULED. EXCEPTION #54.

A. He told them that they wanted to be arrested and wanted to go to jail.

When I placed the group under arrest, I advised them that they were under arrest. Five troopers went around the group and were between the group on the highway and the group on the shoulder. The purpose of that was to keep the ones on the shoulder from stepping out into the group. Then they were told that they were under arrest and to follow us to the Hyde County jail. They readily did so. No problem.

Q. After the traffic was blocked, did you have to summons the five troopers? OBJECTION. OVERRULED.

A. No, they were standing by.

Q. Did any of those that had gotten off the highway when requested to do so, did they get into the group the officers were escorting to jail? OBJECTION. OVERRULED. EXCEPTION #55.

A. Some attempted to, but none did.

CROSS EXAMINATION (By James E. Ferguson, II)

I stated there were some 40 to 45 persons out there on this occasion. I first saw the group when they came in front of the courthouse. They stayed there ten minutes. During that time, they were shouting and clapping their hands, hollering and making a lot of noise. Sometimes they were singing, singing various songs. I don't know the specific name of the songs. I don't know what they related to any more than what I hear everyday. I don't know what they were singing them for. I know part of the songs were about. I have heard so many, I can't think of any of them.

Q. Freedom songs? OBJECTION. CONCLUSION OF COUNSEL. SUSTAINED.

A. After singing songs they went out into Business 264. They were at this time on the sidewalk in front of the courthouse and went straight into the street. On the other side of the street is an abandoned Sinclair Station and some little building on the other side. I don't know whether there is an actual shoulder on the road out there. People park over there on the traveled portion. I assume it is a highway right-of-way on this side of the ditch. There is a break in the service station property and the paved portion of the road. This is dirt between the ditch and the pavement. There are some planks running directly in front of the station that connect the cement portion of the station with the dirt portion. Then the dirt runs right up to the paved portion of the highway. Everything this side of that ditch is highway right-of-way. Thirty feet each side of the center line is highway right-of-way. I state this on the basis that all secondary roads are, unless marked

otherwise, 18 feet wide paved portion, 30 feet each side of right-of-way.

Q. But you have no actual knowledge about this particular road, is that correct? OBJECTION. SUSTAINED.

They were at the intersection of 264, Business, approximately 5 minutes before I went over to disburse them and get them off the road, and to advise them not to impede traffic. The first time I went there, traffic was being blocked. That was my purpose in going. I did not testify a few minutes ago that when I first went out there that no traffic was coming from either direction. I warned them that they would be arrested if they blocked traffic. At the time I warned them, there wasn't any traffic being blocked. After I did that, I got off the traveled portion of the road. I remained in close proximity to the persons I had just talked to. At that time Barbara Burras, William Blount, Sharon Harris, Sarah Annette Whitney, Walter Anthony Green, Dessie Harris, Evelyn Gibbs, Ronnie Lee Topping, Tyrone Dudley, Theresa Blount, Linda Sue Gibbs and Patricia Collins, Nekola Green, along with others were milling around in the traveled portion of the road, laughing, talking, shouting and singing. They were never in one spot. I knew each of these individuals at that time. I could not identify them all by name at that time. They had all been picked up before. MOTION TO STRIKE THE LAST STATEMENT ABOUT BEING PICKED UP BEFORE. MOTION DENIED. EXCEPTION #56.

They were advised two different times to get off the road. The third time, I arrested them. They got off the road the first time and the second time we advised them. Only a matter of minutes elapsed between then and the time of arrest. All that were on the traveled portion of the road were placed under arrest. They were charged with violating the criminal law and they were taken to jail where names, addresses and ages were checked. They were locked up. I do not know how long they remained locked up.

Q. Was it more than 48 hours? OBJECTION. SUSTAINED.

A. I am not sure if bail was set for the entire group or not. It was set for some.

I have stated that they were out and singing, clapping hands and shouting. They said they wanted to go to jail. I did not use any mechanical device to address them. When I spoke with them, some quieted down. Assuming their hearing was all right, I would say that they could hear what I said. Sgt. Smith and I used a battery powered device when we were compelled to and had it handy. I did not hear Sgt. Smith's testimony to that effect. I was not in the courtroom. I do not necessarily use a battery powered microphone.

Q. In other words, you may or may not have been heard on that day? OBJECTION. SUSTAINED.

The arrests were made about 3:15 or 3:20.

Q. Do you know whether or not any of the juveniles gave their ages or dates of birth so that it would indicate that they were juveniles in this group? OBJECTION. OVERRULED.

A. The juveniles were not detained. They were held long enough for their ages to be established. Some were released by dark that afternoon. Those that told the truth about their ages, shortly after dark. I did use a battery powered loud speaker on other occasions. This was November 12th or 13th. These cases were similar situations, but larger groups. This group was compact over a small area.

Q. What were those other groups doing when you used the battery powered microphone?

A. The same violation—impeding traffic. MOTION TO STRIKE. MOTION DENIED. EXCEPTION #57.

THE STATE RESTS.

PROCEEDINGS

MR. FERGUSON: There will be no evidence for any of the juveniles, and we renew our motion to dismiss. MOTION DENIED. EXCEPTION #58.

The Court entered the following Orders:

ORDER OF PROBATION (Barbara Burras, No. 68-J-4)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Lillie Mae Burras, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15, inclusive, and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

And it further appearing to the Court that heretofore on the 9th day of January, 1969, said Barbara Burras was adjudged to have violated the laws of this State and was found to be delinquent and in need of the protection and discipline of the State, and in need of more suitable

guardianship; and it further appearing to the Court that the matters and things set out herein corroborate the findings and order heretofore entered in the matter numbered 69-J-17; and it further appearing to the Court that said child should be placed upon probation and that the order heretofore entered in 69-J-17 is appropriate and to the best interest of said child.

NOW, THEREFORE, the Order heretofore entered January 9, 1969, in file #69-J-17 is incorporated and made a part of this order as fully as if set out herein, and said child thereby placed on probation in the manner and under the conditions therein set forth.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (William Blount, No. 68-J-5)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Joe Lee Blount, his father, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15, inclusive, and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Stat-

utes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED AND DECREED that William Blount be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at his residence by 11:00 o'clock P.M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Nekola Green, No. 68-J-6)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Ella Mae Green, her grandmother, both of her parents being out of the State, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did thereby impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and in-

tentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law, and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Nekola Green be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some instution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Sharon Harris, No. 68-J-7)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Farker Harris, her grandfather, her mother being in New Jersey and her father in Delaware, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Sharon Harris be, and she is hereby committed to the custody of the Hyde County Depart-

ment of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF PROBATION (Sarah Annette Whitney, No. 68-J-8)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Sarah Spencer, her grand-

mother, her mother being in New York and her father in California, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15, inclusive, and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

And it further appearing to the Court that heretofore on the 9th day of January, 1969, said Sarah Annette Whitney was adjudged to have violated the laws of this State and was found to be delinquent and in need of the protection and discipline of the State, and in need of more suitable guardianship; and it further appearing to the Court that the matters and things set out herein corroborate the findings and order heretofore entered in the matter numbered 69-J-18; and it further appearing to the Court that said child should be placed upon probation and that the order heretofore entered in 69-J-18 is appropriate and to the best interest of said child.

NOW, THEREFORE, The Order heretofore entered January 9, 1969, in file #69-J-18, is incorporated and

made a part of this order as fully as if set out herein, and said child thereby placed on probation in the manner and under the conditions therein set forth.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Walter Anthony Green, No. 68-J-9)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Emily Green, his grandmother; his father and his mother's whereabouts being unknown, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion —said acts having been wilfully and intentionally done

and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Walter Anthony Green be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at his residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Dessie Harris, No. 68-J-10)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Leona Harris, her grandmother; her mother being in New Jersey and her father's whereabouts being unknown, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record, and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Dessie Harris be, and she is hereby committed to the custody of the Hyde County Department of Public welfare to be placed by said department in a suit-

able institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation;

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF PROBATION (Evelyn Gibbs, No. 68-J-11)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Ada Pearl Gibbs, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Fur-

gerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15, inclusive, and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and doe not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion —said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Code being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

And it further appearing to the Court that heretofore on the 9th day of January, 1969, said Evelyn Gibbs was adjudged to have violated the laws of this State and was found to be delinquent and in need of the protection and discipline of the State, and in need of more suitable guardianship; and it further appearing to the Court that the matters and things set out herein corroborate the findings and order heretofore entered in the matter numbered 69-J-11; and it further appearing to the Court that said child should be placed upon probation and that the order heretofore entered in 69-J-11 is appropriate and to the best interest of the said child.

NOW, THEREFORE, the Order heretofore entered January 9, 1969, in file #69-J-11, is incorporated and made a part of this order as fully as if set out herein,

and said child thereby placed on probation in the manner and under the conditions therein set forth.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Ronnie Lee Topping, No. 68-J-12)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Rosa Mackey, his grandmother, his mother being in New York and his father's whereabouts being unknown, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an

act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Ronnie Lee Topping be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at his residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Tyrone Dudley, No. 68-J-13)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Daisy Dudley, his great-grandfather; his mother and father being deceased, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Tyrone Dudley be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S.

134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation;

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at his residence by 11:00 o'clock P.M. each evening;
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION
(Theresa Blount, No. 68-J-14)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Joe Lee Blount, her father, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon.

Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby impede and block traffic after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Theresa Blount be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;

2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated

agent, at least once each month at a time and place designated by said Director;

3. That said child be at her residence by 11:00 o'clock P.M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION
(Linda Sue Gibbs, No. 68-J-15)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Hazel Gibbs, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after

having been advised to remove from said traveled portion —said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Linda Sue Gibbs be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P.M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF PROBATION (Patricia Collins, No. 69-J-27)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Helena Collins, her sister-in-law, her mother having been present January 9, 1969, and having requested to be excused from court today, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 68-J-4 through 68-J-15 inclusive and 69-J-27, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 6th day of December, 1968, the said child did in the company of others go upon the paved portion of a main traveled highway and remained upon said traveled portion of said highway, and did, thereby, impede and block traffic, after having been advised to remove from said traveled portion—said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent; and it further appearing to the Court that heretofore on the 9th day of January, 1969, said Patricia Collins was adjudged to have violated the laws of this State and was found to be delinquent and in need of the protection and discipline of the State, and in need of more suitable guardianship; and, it

further appearing to the Court that the matters and things set out herein corroborate the findings and order heretofore entered in the matter numbered 69-J-22; and it further appearing to the court that said child should be placed upon probation and that the order heretofore entered in 69-J-22 is appropriate and to the best interest of said child.

NOW, THEREFORE, the Order heretofore entered January 9, 1969, in file #69-J-22 is incorporated and made a part of this order as fully as if set out herein, and said child thereby placed on probation in the manner and under the conditions therein set forth.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

To the signing and entry of the foregoing judgments the respondent juveniles object and except. EXCEPTION #58A.

APPEAL ENTRY

MR. FERGUSON: I would like to give notice of appeal in the same manner and form as I did yesterday.

THE COURT: I advised yesterday that I could not allow any appeal in forma pauperis without an affidavit. However, I will, upon your request, enter the same appeal entries here as I did yesterday in the matters 69-J-17 through 69-J-24.

MR. FERGUSON: That is what I would like to do.

SUBMISSION OF PROCEEDINGS

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 10, 1969, at a regularly calendared session of Juvenile Court in Hyde County.

This ..... day of ....., January, 1969.

/s/ HALLETT S. WARD
Judge Presiding

SUMMARY OF EVIDENCE IN RE: DONALD WHITE, 69-J-25, and WILMA JOYCE WHITAKER, 69-J-26

Pursuant to G.S. 7A-195 of the General Statutes of North Carolina and Rule 19(g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearings. Findings of fact are contained in the attached orders.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 10, 1969, with the undersigned Judge presiding. The State was represented by the Honorable Herbert Small, Solicitor for the First Solicitorial District and the juveniles were represented by James E. Ferguson, II, Esq. The State, at the request of the said James E. Ferguson, II, moved that these matters, numbered 69-J-25 and 69-J-26 be consolidated for hearing, findings and disposition. Motion allowed. The Solicitor moved that the third paragraph of the Petition in these cases 69-J-25 and 69-J-26 be amended. The attorney for the juveniles objected. The objection was overruled and the amendment allowed. EXCEPTION #59.

Upon the call of the above enumerated matters for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juveniles, their parents or guardians, and witnesses should be present for the hearing. The attorney for the juveniles objected. Objection overruled. EXCEPTION #60.

Each child was accompanied by his or her aunt or grandfather.

The attorney for the juveniles moved to dismiss the petition for each juvenile on the grounds that the juvenile statutes, N.C. Gen. Stat. Section 110-21, et seq., under which these cases are to be tried, are unconstitutionally vague and overbroad and deprive the juveniles of equal protection and due process of law. Motion denied. EXCEPTION #61.

Mr. Ferguson requested a jury trial. Request denied. EXCEPTION #62.

SERGEANT WILLIE ROGERS testified:

DIRECT EXAMINATION (By Mr. Small)

I am Sgt. Willie Rogers, employed by the North Carolina Highway Patrol. On November 18, 1968, I was in Hyde County. On this occasion I saw the juveniles, Donald White and Wilma Joyce Whitaker, I am not sure of the exact time but it was about noon. When I first observed these two they were in the company of a group totaling twenty-one. They were marching on 264 Business in a westwardly direction about three-quarters of a mile out of town. As this group came into town and in front of the Esso Station they got over into the traveled portion of the road. The girls stayed in the eastbound lane about three feet from the centerline of the road. The males in the group stayed in the westbound lane about two or three feet from the centerline.

MR. FERGUSON: MOTION TO STRIKE. MOTION DENIED.

When I first saw them they were walking on the shoulder, the lefthand side, in an orderly fashion. These respondents were in the group and remained in the group. There were twelve girls and nine males on the business portion of Highway 264 here in Swan Quarter. At that point in front of the Esso Station the two traveled lanes are approximately eighteen feet wide. There is no shoulder on the south side. Directly across on the north shoulder there is a real narrow dirt shoulder. After the girls got in the eastbound lane and the males in the westbound lane each of these participants had a roll of paper about two and one-half feet long. The paper was rolled up and they were hitting each other with the paper. They were advised to get out of the street, that if they interfered with the traffic they would be arrested. At this time there was no traffic. They remained there and did not leave at that time. One or more vehicles approached from

each direction but I don't know the exact number. These vehicles could not have gotten around the group.

The vehicles remained stopped five minutes or less. When traffic was stopped they were told a second time to clear the road. They remained there and completely ignored the request that was made. Then they were told they were under arrest and went along peacefully to the county jail. No resistance at all. They were neither singing nor clapping. They were just laughing and hitting each other with rolls of paper. The entire group of 21 persons was taken into custody.

Q. At that time did the two juveniles, Donald White and Wilma Joyce Whitaker, give you their date of birth? OBJECTION. OVERRULED.

A. Yes.

Q. What date did they give you? OBJECTION. OVERRULED.

A. Wilma Joyce Whitaker gave the date 1/12/52 which was corrected to read age fourteen, 1/12/54.

To the best of my knowledge this latter date is correct. On this occasion Donald White gave his age as seventeen and birth date as 1/24/51. He produced a birth certificate from the State of Virginia showing 1/24/53.

CROSS EXAMINATION (By James E. Ferguson, II)

I said that when I first observed the group they were coming from the East toward town. When I first saw the group I rode by them in my patrol car with Sgt. Smith. Sgt. Smith was driving at a moderate speed of twenty to twenty-five or less. At this time I did not recognize all of the twenty-one persons by name. I did recognize Donald. I did not recognize Wilma Joyce at that time. We first drove towards the east and then turned around and went west. When I first observed them they were from one-half to three-quarters of a mile from the Esso Station. They walked that distance in a straight line in a column of two's. When I advised them they would be arrested if they blocked traffic they were in the travel portion of the highway but there was no traffic. Each of them was standing about three feet

from the centerline. At this point they were not proceeding east, they were standing still. They had rolls of paper. They were just standing there in the road playing with each other. I could determine the approximate ages of the members of the group based upon what they had previously told us. The maximum age of the females was 19 and the maximum age of the males was 16 except Donald said he was seventeen. I have been on duty here in Hyde County since the first week in September.

Q. To your knowledge is there any playground facilities provided here? OBJECTION. SUSTAINED.

After I saw them playing in the street I walked from the Courthouse where I had parked my car. There were other patrol cars present situated in various places on each side of the building. No patrol car parked in the highway to my knowledge. There were no patrol cars parked in the road. On that particular day there were twelve patrolmen present. They were not out where the kids were playing. They came out and placed them under arrest and escorted them to jail. When they came out they circled the group and marched them to the county jail. I don't recall whether the group altered their position from standing on either side of the centerline. I said the traveled portion of the road was approximately eighteen feet wide with two traveled lanes. The average automobile is at least eight feet wide. An eight-foot wide automobile could not pass these persons without having to go through the station yard or the ditch on the other side. There is a cleared portion used as a station yard where a car could get around. I testified earlier that a certain portion of the road on each side is designated as right-of-way unless otherwise posted. There is nothing posted out at the service station stating that the State owns the property between the highway and the station yard but the concrete base out there was not put there by the State. It is private property.

REDIRECT EXAMINATION (By Mr. Small)

No force was used when these people were placed under arrest. I did not place a hand on them. Some ran in

the direction of the jail. I had seen these respondents before under similar circumstances, impeding traffic.

MR. FERGUSON: MOTION TO STRIKE. MOTION DENIED. EXCEPTION #63.

Q. Do you remember how many other occasions you had come in contact with these respondents? OBJECTION. OVERRULED. EXCEPTION #64.

A. As far as the defendant, Wilma Joyce Whitaker, I only recall one other occasion. As far as the defendant, Donald White, this would be either the third or fourth time. Second, or more possible the third time.

MR. SMALL: THE STATE RESTS.

MR. FERGUSON: MOTION TO DISMISS.

THE COURT: MOTION DENIED. EXCEPTION #65.

MR. FERGUSON: There will be no evidence for either juvenile. We renew our Motion.

THE COURT: MOTION DENIED. EXCEPTION #66.

ORDER OF COMMITMENT AND PROBATION (Wilma Joyce Whitaker, No. 69-J-26)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the child and Erma Blount, aunt, being present, as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-25 for hearing, findings and disposition and said attorneys having further agreed that such consolidation

is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 18th day of November, 1968, the said child did in the company of approximately 20 people on one of the main traveled highways in Swan Quarter, North Carolina, impede the flow of traffic by standing upon the traveled portions of said highway, said acts being intentionally done and with the intent to violate the laws of the State and to impede traffic, and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Wilma Joyce Whitaker be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, nor inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;

2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;

3. That said chiid be at her resident by 11:00 o'clock P. M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10 day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Donald White, No. 69-J-25)

This matter, coming on to be heard, and being at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the child and Harry Gibbs, grandfather, were present, as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-26 for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 18th day of November, 1968, the said child did in the company of approximately 20 people on one of the main traveled highways in Swan Quarter, North Carolina, impede the flow of traffic by standing upon the traveled portions of said highway, said acts being intentionally done and with the intent to violate the laws of the State and to impede traffic, and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied

and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Donald White be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at his resident by 11:00 o'clock P. M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

To the signing and entry of the foregoing judgments the respondent juveniles object and except. EXCEPTION #67.

APPEAL ENTRY

THE COURT: I presume you wish to appeal from these Orders also?

MR. FERGUSON: Yes, I wish to object to the signing and entry of the Order and renew the motions and objections I made in cases 69-J-17 through 69-J-24.

THE COURT: I will do the same in this group of cases I did before, and will enter a copy of your appeal entries here.

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 10, 1969, at a regularly calendared session of Juvenile Court in Hyde County, North Carolina.

This the ..... day of ..... 1969.

/s/ HALLETT S. WARD
Judge Presiding

SUMMARY OF EVIDENCE IN RE: JAMES LAMBERTH HOWARD, 68-J-3

Pursuant to GS 7A-195 of the General Statutes of North Carolina and Rule 19 (g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold session of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearings. Findings of fact are contained in the attached Orders.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 10, 1969, with the undersigned Judge presiding. The State was represented by the Honorable Herbert Small, Solicitor for the First Solicitorial District and the juveniles

were represented by James E. Ferguson, II, Esq. The Solicitor moved to amend the Petition. Mr. Ferguson objected. Objection overruled and amendment allowed. Only the juvenile and his mother, Pearl Howard, and officers of the Court were present. The attorney for the juveniles moved to dismiss the petition for said juvenile on the grounds that the juvenile statutes, N. C. Gen. Stat. Section 110-21, et seq., under which these cases are to be tried are unconstitutionally vague and overbroad, and deprive the juvenile of equal protection and due process of law. Motion denied. EXCEPTION #68. Mr. Ferguson requested a jury trial. Request denied. EXCEPTION #69.

H. FRED SIMONS

DIRECT EXAMINATION

My name is H. Fred Simons, and I am employed by the Board of Education as principal of the O. A. Peay School since 1966. On December 5, 1968, I was so employed and my office was in the school. In addition to my private office, there is my secretary's office, a nurse's station, and a storage closet; all connected.

I went to school about 7:45 that morning. School opened at 8:00, and we closed it prior to 12:00. The normal closing time on December 5, 1968, would have been 3:17 P. M. I left school about five to ten and went to a ten o'clock meeting in the Superintendent's office. Within ten to fifteen minutes I received a telephone call and returned to the O. A. Peay School about 10:30 or 10:40.

When I returned to school I did not go to my office. I requested the students that I was responsible for to be put on the buses. It was my idea to get those people safely away.

When I returned to school I found a number of highway patrol officers, personnel from the Sheriff's department, and quite a number of children outside. These children were not enrolled in my school; they were residents of Hyde County and should have been enrolled in

the school. They were making noises. I wanted to get the students home because there was a deviation from the normal. By deviation, I mean persons on compus who were neither students nor personnel.

I returned to my office about noon. I had locked my office before I left. The secretary's office adjoining mine was in somewhat a disarray. Things were turned over, papers on the floor, a cabinet had been removed from one room to another, a desk was down, a chair turned over on the side, there was a spinner wheel and hub-cap on the floor.

James Lambert Howard is not one of my students. In my secretary's office was the bed from the nurse's room. It was located on the wall of my secertary's office. When I left that morning it was in the nurse's room where it normally stayed.

There were objects littering the store room floor which had not been there when I left to attend the Superintendent's meeting. The paper on the floor, the roll of electric wire, the books and stand are school property.

I had not authorized anyone to place those objects in disarray or to displace them. I had not authorized James Lambert Howard to go into my office, or the other rooms.

SERGEANT WILLIE ROGERS

DIRECT EXAMINATION:

I am Sgt. Willie Rogers, employed by the North Carolina Highway Patrol. I had occasion to go to the O. A. Peay School on December 5, 1968. I arrived about 10:30 a. m. I was the third officer to arrive. Lieutenant Lance and Trooper Britton arrived before. When I arrived there were approximately forty-five to fifty students outside the building at what appears to be the front of the building. Students were outside yelling, screaming, singing and shouting. There was a group inside the principal's office. They were yelling inside. Once we told them to get out of the building. The principal's office is lo-

cated inside the building. You turn right down the hall and back to the right. There is the principal's office and a door leads to the secretary's office. There were sixteen (16) in this office, shouting and yelling.

MR. FERGUSON: Motion to strike.

THE COURT: Motion denied. EXCEPTION #70.

The door that leads into the hall from the secretary's office has a section of glass in the door. You can see into the room. There is a door from the secretary's office into the principal's office. There were objects piled up against the window. The subjects inside this room were moving a metal cabinet about. All of them were moving something or yelling. They moved the cabinet to the window. They propped the bed up on the door.

OBJECTION OVERRULED (EXCEPTION #71)

We got the sixteen persons out of the secretary's room and took them into custody. James Lambert Howard was one of the sixteen. I observed James Lambert Howard participating with this group in moving the furniture and so forth, around in the office.

MR. FERGUSON: Motion to strike.

THE COURT: Denied (EXCEPTION #72)

We waited to get the sixteen people out of the Secretary's office until school was dismissed. After the students were dismissed and escorted to the school bus we came back and got these subjects out of the office one at the time and put them on a prison bus and brought them to the Hyde County jail. I went into the nurse's room adjoining the secretary's room.

Q. I show you State's Exhibit 5 and ask you if it clearly shows what you saw after you removed the people from the office?

OBJECTION OVERRULED (EXCEPTION #73)

A. It does.

When I entered there was water on the floor. There was water around the lavatory and the desk. The area was about three and one-half feet by four and one-half feet. A scale was pushed out in the floor. There was a wet towel draped on the lavatory.

Q. I show you State's Exhibits 3, 6 and 1 and ask you if they fairly and accurately show you the secretary's office as it appeared when you entered it?

Q. It does.

At the door leading to the secretary's office there was a tall metal cabinet approximately six feet in height. We moved the cabinet in order to get in. There was a mattress up in the glass window or glass door. There was a pillow stuffed up in it. There were papers scattered on the floor. A hubcap was on the floor. A small table and chair were laying on their sides. Everything was disarranged in a disorderly manner.

Q. The State shows you Exhibit 2 which shows the storage room. Did it appear in this manner when you entered?

OBJECTION OVERRULED (EXCEPTION #74)

A. Yes.

In this room a box of books was lying in the floor. Boxes were pulled away from the wall in a most disorderly fashion and there was a roll of wire in the floor.

Q. How did you gain entrance in the secretary's room after school had been dismissed?

A. After our request was denied to open the door we opened the door by force, breaking the lock on the door.

MR. FERGUSON: Motion to strike.

THE COURT: Motion denied. (EXCEPTION #75)

We gained entrance by force. There is a room off to the side, a storage room or stock room. Medical supplies were there also. It was disarranged, boxes torn open.

MR. SMALL: The State offers into evidence Exhibits 4, 5 and 9.

THE COURT: They will be admitted for the purpose of illustrating the testimony of Sgt. Rogers to the extent that they may so illustrate his testimony.

Q. Was it after these requests had been denied that you broke the door to gain entrance?

OBJECTION OVERRULED (EXCEPTION #76)

A. Yes

CROSS EXAMINATION by Mr. James E. Ferguson, II.

I said there were sixteen persons in this area. It is true that I do not know any specific thing that James Lambert Howard did while he was in the room. I do not recall any specific statement that he made.

MR. SMALL: The State rests.

MR. FERGUSON: Motion to dismiss

THE COURT: Motion denied. (EXCEPTION #77)

MR. FERGUSON: There will be no evidence for the Respondent and I renew my Motion to Dismiss.

THE COURT: Motion denied. (EXCEPTION #78)

ORDER OF COMMITMENT AND PROBATION (James Lambert Howard, No. 68-J-3)

This matter coming on to be heard and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convening this 10th day of January, 1969, the Court having determined that the juvenile is under sixteen (16) years of age, the Court having heretofore explained to the child and to Pearl Howard, the mother of the child the nature of this proceeding, it appearing to the Court, and the Court finding as a fact that on or about the 5th day of December, 1968, the said child did, in the company of 15 others, enter without lawful authority the O. A. Peay School in Swan Quarter, North Carolina, and participate with others in making loud noises which were calculated to and did in fact disturb and disrupe said school which was then in session and did disarrange and disrupt an office in said school and did join with others in a course of conduct designed to cause a cessation of school activities and that said acts constitute a violation of GS 14-132 and GS 14-273; and it further appearing to the Court and the Court being satisfied and finding as a fact that said James Lambert Howard is in need of the care, protection and discipline of the State and is in need of more suitable guardianship, and is delinquent.

Now, it is therefore, ORDERED, ADJUDGED AND DECREED, that James Lambert Howard be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintaned by the State (as said institutions may be enumerated in GS 134-91) and held by said institution for no definite term, but until such time as the Board of Juvenile Correction or the Superintendent of said institution shall determine, not inconsistent with the laws of this State. This commitment is suspended and said child placed on probation for 24 months:

1. That he violate no laws of the State of North Carolina for 24 months.
2. That he be at his residence by 11:00 P. M. each evening.
3. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.
4. That he report to the Director of the Hyde County Department of Public Welfare, or his designated agent at least once each month at a time and place designated by said Director.

This matter is retained pending further order of the Court.

This 10 day of January, 1969.

/s/ HALLETT S. WARD

To the signing and entry of the foregoing judgments the respondent juveniles object and except. (EXCEPTION #79)

APPEAL ENTRY

MR. FERGUSON: I wish to appeal in the same manner I have done in the other cases.

THE COURT: I will enter a copy of your appeal entries in the first case here.

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 10, 1969, at a regularly calendared session of Juvenile Court Hyde County, North Carolina.

This the ..... day of ....., 1969.

/s/ HALLETT S. WARD
Judge Presiding

SUMMARY OF EVIDENCE IN RE: ROSE MARY WHITNEY No. 69-J-15

Pursuant to GS 7A-195 of the General Statutes of North Carolina and Rule 19 (g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold session of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearing. Findings of fact are contained in the attached Order.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 10, 1969, with the undersigned Judge presiding. The State was represented by the Honorable Herbert Small, Solicitor for the First Solicitorial District, and the juvenile was represented by James E. Ferguson, II, Esq. The Solicitor moved that the third paragraph of the Petition in this case, 69-J-15, be amended. The attorney for the juvenile objected. The objection was overruled and the amendment allowed. (EXCEPTION #80) Upon the call of the above enumerated matter for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juvenile, her parent or guardian, and witnesses should be present for the hearing. The attorney for the juvenile objected. Objection overruled. (EXCEPTION #81) The child was accompanied by her mother. The

attorney for the juveniles moved to dismiss the petition for each juvenile on the grounds that the juvenile statutes, N. C. Gen. Stat. Section 110-21, et seq., under which these cases are to be tried are unconstitutionally vague and overbroad, and deprive the juveniles of equal protection and due process of law. Motion denied. (EXCEPTION #82). Mr. Ferguson requested a jury trial. Request denied. (EXCEPTION #83)

THE COURT: As I have advised previously, this is a session of juvenile court and is not a criminal hearing. This is why I have excluded the general public. I want to read to you from our General Statutes that provide in part as follows: that session of Juvenile Court shall be held at such times and in such places within the County as the Judge shall from time to time determine. In the hearing of any case, the general public may be excluded and only such persons admitted as have a direct interest in the case. Sessions of the Court shall not be held in conjunction with any other business of the Court, and childrens' cases shall not be heard at the same time as those against adults. The Court shall maintain a full and complete record of all cases brought before it, to be known as the Juvenile Record. All records may be withheld from indiscriminate public inspection in the discretion of the Court, but such record shall be open to inspection by parents, guardians, or other authorized representatives of the child concerned. No adjudication shall operate as a disqualification of any child for any public office and no child shall be denominated a criminal by reason of such adjudication, nor shall any such adjudication be denominated a conviction. Our Supreme Court has stated that the express intention of this Statute is that in all proceedings under its provisions, the Court shall proceed upon the theory that a child under its jurisdiction is the Ward of the State and is subject to the discipline and entitled to the protection which the Court should give such child under the circumstances disclosed in the case. Moreover, any order or judgment made by the Court in the case of any child should be subject to such modification from time to time as the Court may consider to be for the welfare of the child. In other

words, and to summarize, this is not a criminal case, but is a hearing to determine whether this child is delinquent and in need of the protection and guidance of the State.

MR. SMALL CALLED SERGEANT WILLIE ROGERS

DIRECT EXAMINATION

I am Sergeant Willie Rogers employed by the North Carolina Highway Patrol. I was in Hyde County on November 13, 1968, and on this occasion saw Rose Mary Whitney at about 11:00 a. m. This juvenile, along with twenty other participants, was in the street in front of the courthouse at the intersection of that street with the Oyster Creek Landing Road. The group was in a circle which had been occupying both lanes of the traveled portion of the road. About one-half of the participants were carrying chickens. They first walked in a circle. The defendant was one of those who was carrying a chicken. They then knelt on their knees in a circle in front of the courthouse. At this time a vehicle approached from the South headed North. This vehicle came past the last intersection prior to the corner beside the court house and stopped. We advised the group that they were impeding traffic and would have to clear the road. They left that location and walked to the corner of Business 264 and the Oyster Creek Landing Road. They continued in a circular motion. When they first got out in Business 264 there was no traffic. They were advised to clear the road. They got back to the side all in one lane at that time. They got off the paved portion and then back on in a circle. At this time a vehicle came for the East and a vehicle came from the West. The vehicle from the East was an ambulance. It had no light on and was not using a siren. Both lanes were blocked and there was no room on the shoulder at that point for vehicular traffic to go around. They were advised for the third time that they were blocking traffic and were subject to arrest. Subsequently they were arrested. They did not leave the third time they were told to leave.

Traffic remained blocked approximately five minutes or more and they were placed under arrest and told to follow us to the jail. They gave no resistance at all. Twenty-one were arrested. Nine of these were males with an average age of fourteen given. There were twelve females and eleven of these later qualified as juveniles.

Q. Did you ask Rose Mary her age?

OBJECTION OVERRULED.

A. Yes.

Q. What date did she give you?

OBJECTION OVERRULED.

A. Seventeen, birth date April 17, 1951. Records later revealed she was fifteen and her date of birth was April 17, 1953.

I do not recall having seen this juvenile before that date in a demonstration where arrests were made. I had seen her on several occasions before in marches in other locations. These marches had occurred during a period of time well over a month.

CROSS EXAMINATION by Mr. Ferguson

Rose Mary had a chicken in her hand. She was wearing slacks or whatever they are called and a light colored jacket or coat with no hat. She did individually block traffic. She was in a group going around in the street. She was not in any one spot. The group was moving all the time. There were twenty-one people in the group. At the location where they were arrested all twenty-one were doing the same thing. When the arrests were made all of the participants were detained. I am not in a position to say over what period of time. They were detained at the Hyde County jail. I took out a warrant for them for violating the criminal law. Rose Mary was locked up until she posted bond. We were acting on the assumption that she was sixteen and that was based on what she told us. I do not recall having any difficulty with Rose Mary. I had seen her in other activities.

MR. SMALL: THE STATE RESTS.

MR. FERGUSON: The juvenile moves to dismiss.

THE COURT: Motion denied. (EXCEPTION #84)

MR. FERGUSON: There will be no evidence for the juvenile and I renew my motion to dismiss.

THE COURT: Motion denied. (EXCEPTION #85)

To the signing and entry of the foregoing judgments the respondent juveniles object and except. (EXCEPTION #86)

APPEAL ENTRY

THE COURT: I presume you wish to appeal from this Order also?

MR. FERGUSON: Yes, I wish to object to the signing and entry of the Order and renew the Motions and objections I made in cases 69-J-17 through 69-J-24.

THE COURT: I will do the same in this case as I did before and will enter a copy of your appeal entries here.

ORDER OF COMMITMENT AND PROBATION (Rose Mary Whitney. No. 69-J-15)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Rurie Whitney, her mother, the nature of this proceeding, as will appear in the Minutes; and this child being represented by James E. Ferguson, II, Esq., Attorney of record; and it appearing to the Court, and the Court finding as a fact, that on about the 13th day of November, 1968 the said child did, in the company of others go upon and occupy a portion of one of the main highways in Swan Quarter, North Carolina, thereby impeding the traffic; and after having been three times advised to from blocking traffic did remain upon said traveled portion of the highway and did intentionally and with purpose and design impede the flow of traffic, said acts constituting a violation of GS 20-174.1, an act for which an adult may be pun-

ished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that said Rose Mary Whitney is in need of the care, protection and discipline of the State and is in need of more suitable guardianship, and is delinquent.

It is now, therefore, ORDERED AND DECREED that Rose Mary Whitney be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the Superintendent of said institution that said person can be received, and held by said institution for no definite term or until such time as the Board of Juvenile Correction or the Superintendent of such institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for eighteen (18) months, under these special conditions of probation:

1. That she violate none of the laws of the State for a period of eighteen (18) months.
2. That she be at her residence by 11:00 p.m. each evening.
3. That she report to the Director of the Hyde County Department of Public Welfare or his agent once each month at a time and place designated by said Director.
4. That she attend some school or institution offering some training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 10, 1969 at a regularly calendared session of Juvenile Court in Hyde County, North Carolina.

This ____ day of _____, 1969.

/s/ HALLETT S. WARD

SUMMARY OF EVIDENCE IN RE: CHERLYN D. WHITNEY—No. 69-J-2 and TRINA SELBY—No. 69-J-7

Pursuant to GS 7A-195 of the General Statutes of North Carolina and Rule 19 (g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearings. Findings of fact are contained in the attached Orders.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 10, 1969, with the undersigned Judge presiding. The State was represented by the Honorable Herbert Small, Solicitor for the First Solicitorial District, and the juveniles were represented by James E. Ferguson, II, Esq. The State moved to amend the Petition in 69-J-2 to correct the name of the juvenile to Cherlyn D. Whitney. Motion allowed. The State, at the request of the said James E. Ferguson, II, moved that these matters, numbered 69-J-2 and 69-J-7, be consolidated for hearing, findings and disposition. Motion allowed. The Solicitor moved that the third paragraph of the Petition in these cases, 69-J-2 and 69-J-7, be amended. The attorney for the juveniles objected. The objection was overruled and the amendment allowed. EXCEPTION #87. Upon the call of the above enumerated matters for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juveniles their parents or guardians, and witnesses should be present for the hearing. The attorney for the juveniles objected. Objection overruled. EXCEPTION #88. Each child was accompanied by her mother or aunt.

The attorney for the juveniles moved to dismiss the petition for each juvenile on the grounds that the juvenile statutes, N. C. Gen. Stat. Section 110-21, et seq., under

which these cases are to be tried are unconstitutionally vague and overbroad, and deprive the juveniles of equal protection and due process of law. Motion denied. EXCEPTION #89.

Mr. Ferguson moved the Court for a trial by jury. Motion denied. (EXCEPTION #90)

THE COURT: The Court ascertained that both juveniles have heretofore been before the Court with their respective mother and aunt and the Court deems it necessary to advise the juveniles and their parents or guardians regarding the nature of the hearing.

MR. SMALL CALLED SERGEANT WILLIE ROGERS

DIRECT EXAMINATION

I am Sgt. Willie Rogers, employed by the North Carolina Highway Patrol. I was in Hyde County November 12, 1968 and on that date saw Cherlyn Whitney and Trina Selby. This was at approximately 12:00 noon on November 12. The two juveniles were in a group on U. S. 264 approximately 300 feet from the intersection. I was in the company of Sgt. Smith and we approached the group. They were in a circle in the roadway. On this particular date there were fifteen females and eleven males. They were all in a circle. They were singing the songs that they normally sang on this type of occasion. Some were laughing, some were talking, and yelling. They were advised to clear the road for vehicular traffic. They did get off on the shoulder and then came back on the road. Sgt. Smith and I were there. At this particular point they were told they would be arrested if they blocked traffic. At this time traffic was coming from the East and a vehicle was coming from the West. The group advised that this was the third time and were told they were under arrest for impeding traffic. We summoned a squad that was in eyesight and they circled the group. Vehicular traffic was at a standstill. Some subjects that were on the shoulder of the road tried to get into the group that was placed under arrest.

MR. FERGUSON: Motion to strike.

MOTION DENIED (EXCEPTION #91)

The first time I told them to clear the highway traffic was coming. The highway at this point is 18 feet wide with an eastbound and westbound lane. When they circled in the highway each outer edge of the circle touched the outer edge of the pavement. When the vehicles approached from the east and west it was necessary for them to stop in the road to avoid hitting the group. When the two vehicles stopped, fifty to seventy-five feet from the group, we advised the group they were under arrest for interfering with the traffic. They were warned twice prior to this as a result of being in the roadway and were told that if they continued to block traffic they would be arrested. We asked them to move out of the roadway and arrested them the third time. They remained in the roadway after the vehicles stopped and we summoned a squad of eight. The squad was at the courthouse some two hundred feet away. When we were going to arrest the group we marched up, summoned them and they formed a line and marched to the jail. This was about Noon. On that same date we arrested another group for similar conduct.

Q. Was Trina Selby in the group that you arrested earlier?

OBJECTION OVERRULED (EXCEPTION #92)

A. Yes. She was taken into custody at that time.

Q. What about the juvenile Cherlyn Whitney, was she in the group arrested earlier?

OBJECTION OVERRULED (EXCEPTION #93)

A. Yes.

Q. This earlier arrest, did it take place in approximately the same location?

OBJECTION OVERRULED (EXCEPTION #94)

A. Yes.

CROSS EXAMINATION by James E. Ferguson, II:

I don't know how many cars were stopped in each direction. I distinctly remember one in each direction. I do know that traffic was stopped before we took action. Each car was stopped about five minutes. The people

were out there singing their usual songs. I think they call them freedom songs. None of those arrested gave any trouble.

REDIRECT EXAMINATION BY Mr. Small:

Q. Sgt. Rogers, did they give you their ages or dates of birth?

OBJECTION OVERRULED.

A. Yes.

Q. What ages or dates of birth did they give you?

OBJECTION OVERRULED

A. Cherlyn Whitney gave the birth date 6/9/52 and Trina Selby gave the age of seventeen and a birth date of 2/13/51.

I have not yet established their correct ages or dates of birth.

MR. SMALL: The STATE RESTS.

MR. FERGUSON: Motion to dismiss as of nonsuit.

THE COURT: Motion denied. (EXCEPTION #95)

MR. FERGUSON: There will be no evidence for either juvenile and I renew my Motion to dismiss.

THE COURT: Motion denied. (EXCEPTION #96)

ORDER OF COMMITMENT AND PROBATION (Cherlyn D. Whitney, No. 69-J-2)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Janie B. Whitney, mother, the nature of this proceeding; as will appear in the Minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitor District, that this matter should be consolidated with

69-J-7 for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12 day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter, North Carolina, and did, while upon the paved portion of said highway impede the flow of traffic and did remain upon said traveled portion of the highway after vehicular traffic had been stopped, and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED AND DECREED that Cherlyn D. Whitney be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 18 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 18 months.

2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;

3. That said child be at her residence by 11:00 o'clock P. M. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10 day of January, 1969.

/s/ HALLETT S. WARD

ORDER OF COMMITMENT AND PROBATION (Trina Selby, No. 69-J-7)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10 day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Bessie Matthews, aunt, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record, and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-2 for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 12 day of November, 1968, the said child did, in the company of others go upon one of the main traveled highways in Swan Quarter, North Carolina, and did, while upon the paved portion of said highway impede the flow of traffic and did remain upon said traveled portion of the highway after vehicular

traffic had been stopped and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED AND DECREED that Trina Selby be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 18 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 18 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P. M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 10 day of January, 1969.

/s/ HALLETT S. WARD

To the signing and entry of the foregoing judgments the respondent juvenile object and except. EXCEPTION #97.

APPEAL ENTRY

THE COURT: I presume you wish to appeal from these orders also?

MR. FERGUSON: Yes, I wish to object to the signing and entry of the Order and renew the motions and objections I made in cases 69-J-17 through 69-J-24.

THE COURT: I will do the same in this group of cases I did before, and will enter a copy of your appeal entries here.

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 10, 1969, at a regularly calendared session of Juvenile Court in Hyde County, North Carolina.

This the ..... day of ....., 1969.

/s/ HALLETT S. WARD
Judge Presiding

SUMMARY AND EVIDENCE IN RE: ALONZO EDWARD HOLLOWAY—69-J-31

Pursuant to GS 7A-195 of the General Statutes of North Carolina and Rule 19 (g) of the Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearing. Findings of fact are contained in the attached order.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 10, 1969, with the undersigned Judge presiding. The State was represented by the Honorable Herbert Small, Solici-

tor for the First Solicitorial District, and the juveniles were represented by James E. Ferguson, II, Esq. The Solicitor moved that the third paragraph of the Petition in this case, 69-J-31, be amended. The attorney for the juvenile objected. The objection was overruled and the amendment allowed. (EXCEPTION #98) Upon the call of the above enumerated matter for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juvenile, his parent or guardian, and witnesses should be present for the hearing. The attorney for the juvenile objected. Objection overruled. (EXCEPTION #99) The child was accompanied by his stepmother.

The attorney for the juvenile moved to dismiss the petition for the juvenile on the grounds that the juvenile statutes, N. C. Gen. Stat. Section 110-21, et seq., under which these cases are to be tried are unconstitutionally vague and ovebroad and deprive the juveniles of equal protection and due process of law. Motion denied. (EXCEPTION #100)

Mr. Ferguson requested a jury trial. Request denied. (EXCEPTION #101)

THE COURT: As I have advised previously, this is a session of Juvenile Court and is not a criminal hearing. This is why I have excluded the general public. I want to read to you from our General Statutes that provide in part as follows: that sessions of Juvenile Court shall be held at such times and in such places within the County as the Judge shall from time to time determine. In the hearing of any case, the general public may be excluded and only such persons admitted as have a direct interest in the case. Sessions of the Court shall not be held in conjunction with any other business of the Court, and children's cases shall not be heard at the same time as those against adults. The Court shall maintain a full and complete record of all cases brought before it, to be known as the Juvenile Record. All records may be withheld from indiscriminate public inspection in the discretion of the Court, but such record shall be open to inspection by the parents, guardians, or other authorized

representatives of the child concerned. No adjudication shall operate as a disqualification of any child for any public office and no child shall be denominated a criminal by reason of such adjudication, nor shall any such adjudication be denominated a conviction. Our Supreme Court has stated that the express intention of this statute is that in all proceedings under its provisions, the Court shall proceed upon the theory that a child under its jurisdiction is the Ward of the State and is subject to the discipline and entitled to the protection which the Court should give such child under the circumstances disclosed in the case. Moreover, any Order or Judgment made by the Court in the case of any child should be subject to such modification from time to time as the Court may consider to be for the welfare of the child. In other words, and to summarize, this is not a criminal case, but is a hearing to determine whether this child is delinquent and in need of the protection and guidance of the State.

MR. SMALL CALLED SERGEANT WILLIE ROGERS

DIRECT EXAMINATION

I am Sergeant Willie Rogers, employed by the North Carolina Highway Patrol. I had occasion to see Alonzo Edward Holloway on November 22, 1968 while I was on duty in Swan Quarter. It was shortly after Noon. The defendant was in the company of twenty-three people, including himself. They were in the roadway of Business 264 standing in the middle of the road reading books in front of the Esso Station. That highway has two paved lanes of travel, one east and one west. On the south side of the highway there is no shoulder. That is where the service station is. On the north shoulder there is grass. It is narrow and now wide enough for a vehicle to park or drive on. The group of twenty-three was standing on the highway in the middle of the road, not exactly in a straight line and not in the center of the road. By their standing there they blocked traffic. I'm not sure how long they remained standing on the

road but they were asked three times not to block traffic. Vehicles came up and stopped and we arrested them. One vehicle from the west had to stop. I don't remember any from the east. It was not a patrol car and I don't recall what type of vehicle it was. The vehicle stopped briefly—I would say three minutes or more. Sgt. Smith and I approached the group and informed them that they were under arrest for impeding the normal flow of traffic. Other officers assisted us. The defendant was there.

Q. What age or birth date did the defendant give you at this time?

OBJECTION OVERRULED

A. On this occasion the defendant gave the age of sixteen and a birth date of 9/15/52. His correct birth date was checked at the Register of Deeds and shows age fifteen and date of birth 9/13/53.

Q. Prior to this occasion had you seen the defendant on any other occasion?

OBJECTION OVERRULED.

A. I had.

Q. Under what circumstances had you seen him?

OBJECTION OVERRULED (EXCEPTION #102)

A. I was in a group that arrested the defendant. I believe it was on two other occasions. It was the second time he gave us the false age. The last time he gave us his correct age.

MR. FERGUSON: Motion to strike. MOTION DENIED. (EXCEPTION #103)

The first time I saw the defendant he was blocking traffic.

CROSS EXAMINATION by James E. Ferguson, II:

I said they were not exactly standing in the middle of the highway. They were scattered—back to back. They took up the inside portion of both lanes. I would say three feet or more from the center line. I don't recall whether more than one car approached from the west. There may have been more. The car made an attempt to go around the persons. When Sgt. Smith and I made the arrest we took them on to the jail, including the Re-

spondent. He was locked up and a regular warrant drawn based on the fact that he gave us his age as he did. He gave us his age as sixteen.

MR. SMALL: THE STATE RESTS.

MR. FERGUSON: Move to dismiss.

THE COURT: Motion denied. (EXCEPTION #104)

MR. FERGUSON: There will be no evidence for the Respondents, and I renew my motion to dismiss.

THE COURT: Motion denied. (EXCEPTION #105)

ORDER FOR PROTECTION OF DELINQUENT (Alonzo Edward Holloway, No. 69-J-31)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 10th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Margaret Holloway, his stepmother, the nature of this proceeding, as will appear in the minutes; and said child being represented by James E. Ferguson, II, Esq., attorney of record; and it appearing to the Court, and the Court finding as a fact that on or about the 22nd day of November, 1968, the said child did, in the company of others go upon and occupy a portion of one of the main highways in Swan Quarter, North Carolina, and did thereby prevent the passage of vehicular traffic, the said acts being intentionally done in wilful disregard of the rights of others and in violation of GS 20-174.1, and being an act for which an adult may be punished by law, and it further appearing to the Court and the Court being satisfied and finding as a fact that the said Alonzo Edward Holloway is in need of the care, protection and discipline of the State and is in need of more suitable guardianship and is a delinquent; and further appearing to the Court that heretofore on the 9th day of January, 1969, at a regular session of Juvenile Court in Hyde County, under Case No. 69-J-30, said child

was adjudged delinquent and the above findings corroborate the findings made in Case No. 69-J-30; and the Court being of the opinion that the Order entered in Case No. 69-J-30 is proper. The Court hereby incorporates by reference the Order entered in Case No. 69-J-30 herein to make said Order a part of this proceeding as fully as if set out herein.

This matter is retained pending further Order of the Court.

This 10th day of January, 1969.

/s/ HALLETT S. WARD

To the signing and entry of the foregoing judgments the respondent juveniles object and except. (EXCEPTION #106)

APPEAL ENTRY

THE COURT: I presume you wish to appeal from these Orders also?

MR. FERGUSON: Yes, I wish to object to the signing and entry of the Order and renew the Motions and objections I made in Cases 69-J-17 through 69-J-24.

THE COURT: I will do the same in this case as I did before and will enter a copy of your appeal entries here.

The foregoing is respectfully submitted to be a summary of the evidence and proceedings held January 10, 1969, at a regularly calendared session of Juvenile Court in Hyde County, North Carolina.

This the 18th day of January, 1969.

/s/ HALLETT S. WARD
Judge Presiding

GROUPING OF EXCEPTIONS AND ASSIGNMENTS OF ERROR

I. The denial of the juveniles' motions to dismiss the petition based on the unconstitutionality of the North Carolina Juvenile Statute, Gen. Stat. Section 110-21, et seq., constituted prejudicial and reversible error in that Chapter 110, Article 2 of the General Statutes of North Carolina is void for vagueness and overbreadth and denies the juveniles their rights of equal protection and due process of the law secured to them by the Fourteenth Amendment of the Constitution of the United States and Article I, of the Constitution of the State of North Carolina.

EXCEPTIONS NOS. 3 (R p 145), 13 (R p 152), 14 (R p 152), 15 (R p 167), 20 (R p 170), 28 and 29 (R pp 176), 30 (R p 195), 32 (R p 196), 42 and 43 (R p 203), 44 (R p 217), 47 (R p 219), 58 (R p 227), 58A (R p 252), 61 (R p 253), 65 and 66 (R p 258), 67 (R p 262), 68 (R p 264), 77 and 78 (R p 268), 79 (R p 270), 82 (R p 271), 84 (R p 274), 85 and 86 (R p 275), 89 (R p 278), 95 (R p 281), 100 (R p 286), 104 and 105 (R p 289), 106 (R pp 290-291)

II. The lower court's denial of the juveniles' motions for a trial by jury violated their right to a trial by jury secured to them by the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 13 and 17 of the Constitution of the State of North Carolina.

EXCEPTIONS NOS. 4 (R p 145), 15 (R p 167), 21 (R p 170), 30 (R p 195), 44 (R p 217), 48 (R p 219), 58 (R p 227), 58A (R p 252), 62 (R p 253), 67 (R p 262), 69 (R p 264), 79 (R p 270), 83 (R p 271), 86 (R p 275), 90 (R p 278), 97 (R p 285), 101 (R p 286), 106 (R pp 290-291).

III. The exclusion of the public from the hearing room violated the juveniles' right to a public trial guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 17 and 35 of the Constitution of the State of North Carolina.

EXCEPTIONS NOS. 2 (R p 145), 19 (R p 169), 46 (R p 219), 58A (R p 227), 60 (R p 253), 81 (R p 271), 88 (R p 278), 99 (R p 286).

IV. The trial court erred by allowing the Solicitor to amend the petitions at the hearing in that each petition, as amended, was vague and ambiguous, apparently charged more than one offense, and failed to adequately inform the juvenile of the charges against him in violation of his right to be informed of the charges against him and to have an opportunity to defend against the charges, these rights being secured to him by the Sixth Amendment and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and Article I, Sections 11 and 17 of the Constitution of the State of North Carolina.

EXCEPTIONS NOS. 1 (R p 145), 15 (R p 167), 18 (R p 169), 30 (R p 195), 31 (R p 196), 44 (R p 217), 45 (R p 219), 58 (R p 227), 59 (R p 253), 67 (R p 262), 79 (R p 270), 80 (R p 271), 86 (R p 275), 87 (R p 278), 97 (R p 285), 98 (R p 286), 106 (R pp 290-291).

V. The trial court erred by admitting into evidence the testimony of police officers concerning prior arrests of the juvenile respondents and prior participation in demonstrations on the part of the juveniles.

EXCEPTIONS NOS. 5 (R p 148), 6 (R p 149), 17 (R p 168), 26 and 27 (R p 176), 33 (R p 33, 34, 35, 36, 37 (R p 200), 38, 39, 40 (R p 201), 41 (R p 203), 56 (R p 226), 57 (R p 227), 63 (R p 257), 64 (R p 258), 92, 93, 94 (R p 280), 102, 103 (R p 289).

VI. The trial court erred by admitting into evidence testimony relating to singing, shouting and clapping of hands on the part of the juveniles and other persons and the conduct of the juveniles and other persons which was totally unrelated to the offense with which the juvenile respondents were charged, said testimony being totally irrelevant, incompetent, immaterial, inflammatory and prejudicial.

EXCEPTIONS NOS. 7, 8, 9, 10 (R p 150), 12 (R p 151), 22, 23 (R p 151), 24, 25 (R p 173), 38 (R p 201), 49, 50, 51, 52, 53, 54 (R p 223), 55 (R p 224), 57 (R p 227), 70, 71, 72 (R p 266), 73, 74 (R p 267), 75, 76 (R p 268), 91 (R p 279).

VII. The trial court erred in denying the juvenile respondents' request to proceed on appeal in forma pau-

peris, and by refusing to allow the parents or persons in loco parentis to the juveniles to make a sworn statement of indigency.

EXCEPTIONS NOS. 16 (R p 167), 17 (R p 168).

JUDGMENT UPON PETITION FOR CERTIORARI IN N. C. COURT OF APPEALS (#69SC19PC)

This matter came on to be considered upon a petition for Writ of Certiorari filed by the Attorney General of the State of North Carolina in behalf of the Chief District Court Judge of the Second Judicial District for an extension of time, and same was considered by the Court of Appeals in a conference to whom it appeared that the said petition for extension of time to summarize and file the evidence and findings of fact in each of the causes filed in this petition should be allowed;

NOW, THEREFORE, it is ordered that the Chief Judge of the District Court for the Second Judicial District is allowed until January 31, 1969, to file the summary of evidence and findings of fact in the above-entitled causes with the Clerk of Hyde County.

IT IS FURTHER ORDERED that the record on appeal in these cases must be docketed by the appellant by 10:00 o'clock A.M. on April 1, 1969, and that thereafter the appellant's brief is to be filed in the Clerk of Court's office by Noon of April 8, 1969, and appellee's brief to be filed by Noon of April 18, 1969. These cases are to be heard in the Court of Appeals as calendared on April 29, 1969 or thereafter, this being the proper date for the call of the calendar for the Second Judicial District. The case on appeal shall be served by the appellants as provided by law on or before Noon of March 7, 1969, and the appellees are given ten (10) days thereafter in which to file exception or serve a counter-case. The Judge of the District Court is allowed ten (10) days thereafter in which to settle the case on appeal should same become

necessary; and that it be so certified to the Clerk of Superior Court of Hyde County, North Carolina.

Witness my hand and official seal this the 30th day of January, 1969.

/s/ THEODORE C. BROWN, JR.
Clerk of the Court
of Appeals

ACCEPTANCE OF SERVICE

Service of the foregoing and within case accepted in apt time.

This the 7th day of March, 1969.

/s/ HERBERT SMALL
Solicitor

STIPULATION OF COUNSEL

The undersigned attorneys for both the State and the defendant stipulate that the foregoing is a true and correct copy of the transcript of the record and evidence in this case.

/s/ HERBERT SMALL
Solicitor

CHAMBERS, STEIN, FERGUSON
& LANNING

By .....
Attorneys for Defendant

(TRANSCRIPT CERTIFIED BY CLERK
SUPERIOR COURT)

A TRUE COPY

/s/ Adrian J. Newton
Clerk of Supreme Court of North Carolina
[SEAL]

NORTH CAROLINA COURT OF APPEALS
SECOND DISTRICT

Spring Session, 1969

Fall Term 1969 #15—Fall 1969 #35 PC

No. 692DC300

From Hyde

IN RE: SELMA SHELTON (69-J-32)
JOHN GREEN CUNNINGHAM (69-J-33)

Before WARD, J., January 1969 Juvenile Session District Court, Hyde Division of the General Court of Justice. Defendants appealed. (Filed C. A. 4-24-69)

JUVENILE PETITION (Shelton)

File #69-J-32

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Selma Shelton
Age 12
Rt. 1, Swan Quarter, N. C.

Sgt. Willie Rogers, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Beadie Spencer	Mother	Rt. 1, Swan Quarter, N.C.
Otis Spencer	Father	Rt. 1, Swan Quarter, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 14, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of GS 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 15th day of January, 1969.

/s/ SGT. WILLIE ROGERS
Petitioner
S.H.P. Williamston, N. C.
Address

JUVENILE SUMMONS (Shelton)

File #69-J-32

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Selma Shelton
Age 12
Rt. 1, Swan Quarter, N. C.

TO: Beadie Spencer — Rt. 1, Swan Quarter, N. C.

Otis Spencer — Rt. 1, Swan Quarter, N. C.

Child, Parents, Other person having custody — Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held in Swan Quarter, North Carolina, at 9:30 o'clock A. M., on the 21st day of January, 1969, For action by the court on the Petition alleging delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be dealt with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or .....,
is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 15th day of January, 1969.

/s/ LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

RETURN

Received: Jan. 17, 1969

Served: Jan. 17, 1969, by reading to and leaving copies of the foregoing Juvenile Summons with: Otis Spencer, Beadie Spencer

/s/ DENNIS W. SIMMONS, D.S.

ORDER AMENDING JUVENILE PETITIONS
(Shelton)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 21st day of January, 1969, prior to any other proceeding in the case, on motion of the Solicitor for the State it is ordered that Paragraph

#3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above or on about Nov. 14, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

JUVENILE PETITION (Cunningham)
File #69-J-33

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
John Green Cunningham
Age 15
Rt. 1, Box 149A,
Engelhard, N. C.

Sgt. Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Ruth Cunningham	Mother	Rt. 1, Box 149A, Engelhard, N.C.
John Cunningham	Father	Rt. 1, Box 149A, Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

Did unlawful and wilfully on November 12, 1968, stand upon the highway or street in such a manner as to impede the regular flow of traffic, in violation of G.S. 20-174.1.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 15th day of January, 1969.

/s/ CHARLES SMITH
Petitioner
S.H.P. Washington, N. C.
Address

JUVENILE SUMMONS (Cunningham)
File #69-J-33

In the General Court of Justice
District Court Division

STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
John Green Cunningham
Age 15
Rt. 1, Box 149A,
Engelhard, N. C.

TO: Ruth Cunningham	Rt. 1, Box 149A Engelhard, N. C.
John Cunningham	Rt. 1, Box 149A Engelhard, N. C.
Child, Parents, Other Person having Custody	Addresses

YOU ARE SUMMONED TO A HEARING in the above case before the Judge of the District Court presiding at a session to be held in Swan Quarter, North Carolina, at 9:30 o'clock A.M., on the 21st day of January, 1969, for action by the court on the Petition, alleging Delinquency.

YOU ARE REQUIRED TO APPEAR IN PERSON at such time and place and show cause why the child or children named above should not be deal with according to the provisions of the North Carolina juvenile law, and if you fail without reasonable cause to appear and abide the order of the court, you may be proceeded against as for contempt of court.

The Sheriff of the County named above, or _____, is hereby directed to serve this Summons by reading the Summons to and leaving true copies thereof with the persons summoned.

This 15th day of January, 1969.

/s/ LENORA R. BRIGHT
Asst. Clerk of the
Superior Court

RETURN

Received: Jan. 17, 1969
Served: Jan. 17, 1969, by reading to and leaving copies of the foregoing Juvenile Summons with Ruth Cunningham

/s/ DEWEY W. SIMMONS, D.S.

ORDER AMENDING JUVENILE PETITIONS
(Cunningham)

The above captioned case being called at the term of District Court of Hyde County called for the trial of Juvenile cases and held on the 21st day of January, 1969, prior to any other proceedings in the case, on motion of the Solicitor for the State it is ordered that Paragraph #3 of the Juvenile Petition be amended to read as follows:

"That the facts and circumstances supporting this Petition for Court action as follows:

That at and in the County named above on or about Nov. 12, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles

and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

/s/ HALLETT S. WARD
District Judge

SUMMARY OF EVIDENCE

IN RE: SELMA SHELTON, 69-J-32

Pursuant to G. S. 7A-195 of the General Statutes of North Carolina and Rule 19 (g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearings. Findings of fact are contained in the attached Order.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 21, 1969, with the undersigned Judge presiding. The State was represented by the Honorable William C. Griffin, Jr., Solicitor for the Second Judicial District and the juvenile was represented by John H. Harmon, Esq. The Solicitor moved that the third paragraph of the Petition in this case, 69-J-32, be amended. There was no objection to the amendment by the Attorney for the juvenile. The amendment was allowed. Upon the call of the above matter for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juvenile, and her parents or guardians, and the witnesses should be present for the hearing. The juvenile was accompanied by her mother and step-father.

The attorney for the juvenile moved to dismiss the petition for the juvenile on the grounds that the juvenile statutes, N. C. Gen. Stat. Section 110-21, et seq., under which these cases are to be tried are unconstitutionally broad and vague, and deprive the juvenile of equal protection and due process of law. Motion denied. EXCEPTION 1.

Mr. Harmon requested trial by jury. Motion denied. EXCEPTION #2

THE COURT: This is not a criminal trial, but a juvenile hearing, and I want to read you the following: Our statutes provide in part that sessions of Juvenile Court shall be held at such times and in such places within the County as the Judge shall from time to time determine.

In the hearing of any case, the general public may be excluded and only such persons admitted as have a direct interest in the case. Sessions of the Court shall not be held in conjunction with any other business of the Court and children's cases shall not be heard at the same time as those against adults. The Court shall maintain a full and complete record of all cases brought before it, to be known as the Juvenile Record. All records may be withheld from indiscriminate public inspection at the discretion of the Court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child concerned. No adjudication shall operate as a disqualification of any child for any public office and no child shall be denominated a criminal by reason of such adjudication, nor shall any such adjudication be denominated a conviction. Our Supreme Court has stated that the express intention of this Statute is that in all proceedings under its provisions, the Court shall proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the Court should give such child under the circumstances disclosed in the case. Moreover, any Order or Judgment made by the Court in the case of any child should be subject to such modification from time to time as the Court may consider to be for the welfare of the

child. In other words, and to summarize, this is not a criminal case, but is a hearing to determine whether this child is delinquent and in need of the protection and guidance of the State.

Mr. Griffin called SGT. WILLIE ROGERS

DIRECT EXAMINATION

I am Sgt. Willie Rogers, employed by the North Carolina Highway Patrol. I was in Swan Quarter on November 14, 1968, and at that time saw Selma Shelton. When I first saw her she was in a group marching towards Swan Quarter. The group was just east of the courthouse on Business 264 marching in a column of two's on the left-hand shoulder facing traffic. At this time the group was in a very orderly fashion. As the group approached the intersection of 264 and the Oyster Creek Landing Road the group got in the intersection of the highway and began playing basketball, tossing the ball back and forth. When they first went onto the highway there was no traffic in either direction. We advised the group to get off the road, that if they impeded traffic they would be arrested. I was with Sgt. Smith. I don't remember whether we used a horn to speak to the group or not. The first vehicle to approach was a 1964 or 1965 model Chevrolet heading in a westerly direction. This vehicle stopped in the right-hand lane. Moments later a vehicle came from the west headed east and stopped about fifty feet wrom the intersection. We advised them to get out of the street. I was in the street at this time myself. They were still playing basketball. tI struck me once or twice. We advised them that they were under arrest. Selma Shelton advised us at that time that she was sixteen. It was later found that she was fifteen. There were twenty-three females and eleven males. I can positively identify Selma Shelton as being among the group on the traveled portion of the highway. On this particular occasion there was a pick-up truck parked on the shoulder and no traffic could come through from either direction. The photograph you show me shows

the scene as I have described it and depicts the location of the juvenile.

THE STATE: I would like to offer this into evidence as illustrating the testimony of the officer.

No objection.

You can see the defendant in this picture. The truck blocking the shoulder of the highway is also shown. The truck is legally parked and shows that traffic could not have gotten by on the shoulder. Traffic passing on the south side would have gone into the station yard. They were playing basketball. I later determined the defendant was under sixteen. The whole transaction took place in five or ten minutes, not over ten. When I say five or ten minutes that is in reference to the actual time the traffic was blocked. I don't think the group was in the roadway over ten minutes.

CROSS EXAMINATION by John H. Harmon

I don't recall if Selma Shelton actually handled the basketball or not. All the people were not playing basketball at once. They were throwing the ball back and forth. Various ones were handling it.

REDIRECT EXAMINATION by Mr. Griffin

The time was approximately Noon-12:05 p.m.

MR. GRIFFIN: The State Rests.

MR. HARMON: Motion to dismiss

THE COURT: Motion denied. EXCEPTION #3

MR. HARMON: There will be no evidence for the juveniles and we renew our Motion to dismiss.

THE COURT: Motion denied. EXCEPTION #4

ORDER OF CUSTODY (Shelton)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 21st day of January, 1969; and the Court having determined that said

child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Otis Spencer, her step-father, and Beadie Spencer, her mother, the nature of this proceeding, as will appear in the Minutes; and the said child being represented by John H. Harmon, Esq., Attorney of record; and the State being represented by Mr. William C. Griffin, Jr., and it appearing to the Court and the Court finding as a fact that on the 14th day of November 1968, the said child, in the company of other did go upon the traveled portion of one of the main highways in Swan Quarter, North Carolina, and did thereby block and impede the normal flow of traffic, said acts having been intentionally done and for the purpose of blocking and impeding traffic and said acts constituting a violation of G.S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the Juvenile is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED AND DECREED that Selma Shelton be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G. S. 134-91), after having first received notice from the Superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, consistent with the laws of this State; this commitment is suspended and said child placed upon probation for twelve months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;

2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated

agent, at least once each month at a time and place designated by said Director;

3. That said child be at his residence by 11:00 P. M. each evening;

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 21st day of January, 1969.

/s/ HALLETT S. WARD
Judge

To the entry of the foregoing judgment, the respondent juvenile objects and excepts. EXCEPTION #5

APPEAL ENTRY (Shelton)

THE COURT: I presume you will appeal and I suggest that you dictate your own appeal entries.

MR. HARMON: I will use the same appeal entries as were used by Mr. Ferguson: The Respondent and her parents or guardians moves the Court for leave to proceed on the appeal in forma pauperis, alleging that the Respondent and her parents are indigent and unable to pay cost of appeal, and requests that the State bear the expense of the cost of transcript. The juvenile is given 60 days within which to make up and serve her case on appeal upon the State. The State is allowed 30 days therefrom to make up and serve countercase or exceptions. The time for docketing the case is hereby extended ten days beyond the 90-day statutory period.

The foregoing, executed in duplicate original, is respectfully submitted to be a summary of evidence and proceedings heard January 21, 1969, at a regularly cal-

endared session of Juvenile Court in Hyde County. This summary is this day mailed to the Clerk of the Court of Appeals and the Clerk of Superior Court in Hyde County.

This 30th day of January, 1969.

/s/ HALLETT S. WARD
Judge

After the hearing and disposition of this matter and the hearing and disposition of the matter entitled 69-J-33, which constituted all the hearings calendared for January 21, 1969, Mr. Harmon offered the attached Affidavit in support of his previous request that the court find that said Juvenile is indigent and order the expense of printing the record and briefs on appeal be paid by Hyde County. Mr. Harmon stated that he would submit appropriate orders, but no such orders were submitted. The Court advised Mr. Harmon that any memorandum of law would be appreciated. None was received.

The Court is of the opinion that while there is statutory authorization for the appointment of counsel for indigent juveniles there is no authority authorizing the Court to order the expense of printing the record and briefs to be paid by a county. Therefore, the Court has not undertaken to determine whether or not this juvenile is indigent. This portion of the summarization of evidence and findings of fact was not made until the date of mailing to Raleigh and Swan Quarter.

SUMMARY OF EVIDENCE

IN RE: JOHN GREEN CUNNINGHAM, 69-J-33

Pursuant to G. S. 7A-195 of the General Statutes of North Carolina and Rule 19 (g) of Rules of Practice in the Court of Appeals of North Carolina, the undersigned District Judge, commissioned to hold sessions of District Court in this State and within the Second Judicial District for a term of four years, beginning December 2, 1968, respectfully submits the following summarization of the evidence in the above listed Juvenile Hearing. Findings of Fact are contained in the attached Order.

A regularly calendared session of Juvenile Court for the County of Hyde was duly convened January 21, 1969, with the undersigned Judge presiding. The State was represented by the Honorable William C. Griffin, Jr., Solicitor for the Second Solicitorial District and the juvenile was represented by John H. Harmon, Esq. The Solicitor moved that the third paragraph of the Petition in this case, 69-J-33, be amended. There was no objection to the amendment by the attorney for the juvenile. The amendment was allowed. Upon the call of the above matter for hearing and disposition, the Court ordered the general public excluded from the hearing room, stating that only officers of the Court, the juveniles and his parents or guardians, and witnesses should be present for the hearing. The juvenile was accompanied by his mother.

The attorney for the juvenile moved to dismiss the petition for the juvenile on the grounds that the juvenile statutes, N. C. Gen. Stat. Section 110-21, et seq., under which these cases are to be tried are unconstitutionally vague and overbroad, and deprive the juvenile of equal protection and due process of law. Motion denied. EXCEPTION #6

Mr. Harmon requested trial by jury. Motion denied. EXCEPTION #7.

THE COURT: This is not a criminal trial, but a juvenile hearing and I want to read you the following:

Our statutes provide in part that sessions of Juvenile Court shall be held at such times and in such places within the County as the Judge shall from time to time determine.

In the hearing of any case, the general public may be excluded and only such persons admitted as have a direct interest in the case. Sessions of the Court shall not be held in conjunction with any other business of the Court and children's cases shall not be heard at the same time as those against adults. The Court shall maintain a full and complete record of all cases brought before it, to be known as the Juvenile Record. All records may be withheld from indiscriminate public inspection in the discretion of the Court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child concerned. No adjudication shall operate as a disqualification of any child from public office and no child shall be denominated a criminal by reason of such adjudication, nor shall any such adjudication be denominated a conviction. Our Supreme Court has stated that the express intention of this Statute is that in all proceedings under its provisions, the Court shall proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the Court should give such child under the circumstances disclosed in the case. Moreover, any Order or Judgment made by the Court in the case of any child should be subject to such modification from time to time as the Court may consider to be for the welfare of the child. In other words, and to summarize, this is not a criminal case, but is a hearing to determine whether this child is delinquent and in need of the protection and guidance of the State.

Mr. Griffin called SGT. CHARLIE SMITH

DIRECT EXAMINATION

I am Sgt. Charlie Smith, employed by the North Carolina Highway Patrol. I was in Hyde County on November 12, 1968, and had an opportunity to see John Green

Cunningham. I first saw him east of the courthouse on 264 Bypass. That was just after lunch. There were twenty-six people apprehended and several who were not taken into custody. When I first observed the group they were walking into the highway and made a circle holding hands. They were moved off the highway more than one time by a squad of troopers. Each time they came back on. As soon as they were blocking traffic on both lanes they were arrested. They were asked to move before they were arrested. Traffic was actually blocked at least one from each direction. John Green Cunningham was among the group on the hard surface portion of the highway at the same time traffic was blocked. The arrests were made after the group was asked to move from the highway. This incident continued more than ten minutes from the time they first walked on the surface until the arrests were made. After the arrest they were brought back to the courthouse to be processed. I mean by this getting their names, addresses, and ages. John Green Cunningham was among the group. He gave his age as sixteen. At the time of the arrest both lanes of the traveled portion of the highway were blocked. A number of people there were not arrested. They were not arrested because they were not blocking traffic. They were on the shoulder of the highway. Only those on the traveled portion of the highway were arrested. I can positively identify John Green Cunningham as being one on the traveled portion of the highway prior to the arrest.

CROSS EXAMINATION by Mr. John H. Harmon

They were on the traveled portion of the road about ten minutes. I can't tell whether John Green Cunningham left the highway. None left the highway until the troopers formed a line and marched towards them. This was done two or three times and then we arrested them. I can positively identify John Green Cunningham as being one of those on the highway. All he was doing was standing on the highway. Some of them were chanting and singing and clapping their hands. None of them were unruly.

REDIRECT EXAMINATION by Mr. Griffin

They were asked to move; they were told to move; then I moved the squad in and marched the squad of the highway and moved towards them and moved them off either two or three times. There was traffic in both lanes of the highway. Traffic was stopped.

MR. GRIFFIN: The State Rests.

MR. HARMON: Motion to dismiss

THE STATE: Motion denied. EXCEPTION #8

MR. HARMON: There is no evidence for the juvenile and I renew my motion to dismiss.

THE STATE: Motion denied. EXCEPTION #9

ORDER OF CUSTODY (Cunningham)

This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 21st day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Ruth Cunningham, his mother, the nature of this proceeding, as will appear in the Minutes; and the said child being represented by John H. Harmon, Esq., attorney of record; and the State being represented by Mr. William C. Griffin, Jr., and it appearing to the Court and the Court finding as a fact that on the 12th day of November, 1968, the said child, in the company of others did go upon one of the main traveled highways of Hyde County, North Carolina, and did remain upon said traveled portion of said highway after being requested to remove therefrom and did by standing in said highway impede the normal flow of traffic and did thereby prevent vehicles from traveling upon said highway, said acts having been willfully done and done with the intention of impeding the normal flow of traffic and the said acts constitute a violation of G. S. 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court

and the Court being satisfied and finding as a fact that the Juvenile is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED AND DECREED that John Green Cunningham be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G. S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, consistent with the laws of this State; this commitment is suspended and said child placed upon probation for twelve months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at his residence by 11:00 P. M. each evening;
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 21st day of January, 1969.

/s/ HALLETT S. WARD
Judge

To the entry of the foregoing judgment the respondent juvenile objects and excepts. EXCEPTION #10

APPEAL ENTRY (Cunningham)

THE COURT: I presume you will appeal and I suggest that you dictate your own appeal entries.

MR. HARMON: I will use the same appeal entries as were used by Mr. Ferguson: The Respondent and her parents or guardians move the Court for leave to proceed on the appeal in forma pauperis alleging that the Respondent and her parents are indigent and unable to pay cost of appeal, and requests that the State bear the expense of the cost of transcript.

The juvenile is given 60 days within which to make up and serve her case on appeal upon the State. The State is allowed 30 days therefrom to make up and serve countercase or exceptions. The time for docketing the case is hereby extended ten days beyond the 90-day statutory period.

After the hearing and disposition of this matter and the hearing and disposition of the matter entitled 69-J-32, which constituted all the hearings calendared for January 21, 1969, Mr. Harmon offered the attached Affidavit in support of his previous request that the Court find that said juvenile is indigent and order the expense of printing the record and briefs on appeal be paid by Hyde County. Mr. Harmon stated that he would submit ap propriate orders, but no such orders were submitted. The Court advised Mr. Harmon that any memorandum of law would be appreciated. None was received.

The Court is of the opinion that while there is statutory authorization for the appointment of counsel for indigent juveniles there is no authority authorizing the court to order the expense of printing the record and briefs to be paid by a county. Therefore, the court has not undertaken to determine whether or not this juvenile is indigent. This portion of the summarization of evidence and findings of fact was not made until the date of mailing to Raleigh and Swan Quarter.

The foregoing, executed in duplicate original, is respectfully submitted to be a summary of evidence and proceedings heard January 21, 1969, at a regularly calendared session of Juvenile Court in Hyde County. This summary is this day mailed to the Clerk of the Court of Appeals and the Clerk of Superior Court of Hyde County.

This 30th day of January, 1969.

/s/ HALLETT S. WARD
Judge

GROUPING OF EXCEPTIONS AND ASSIGNMENTS OF ERROR.

I. The denial of the juveniles' motions to dismiss the petition based on the unconstitutionality of the North Carolina Juvenile Statute, Gen. Stat. Section 110.21, et seq., constituted prejudicial and reversible error in that Chapter 110, Article 2 of the General Statutes of North Carolina is void for vagueness and overbreadth and denies the juveniles their rights of equal protection and due process of the law secured to them by the Fourteenth Amendment of the Constitution of the United States, and Article I, Section 17 of the Constitution of the State of North Carolina.

(EXCEPTIONS Nos. 1, 3, 4, 5, 6, 8, 9, and 10, R pp 9, 12, 14, 16, 19, and 21)

II. The lower court's denial of the juveniles' motion for a trial by jury violated their right to a trial by jury secured to them by the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 13 and 17 of the Constitution of the State of North Carolina.

(EXCEPTIONS Nos. 2 and 7, R pp 9, 17)

ACCEPTANCE OF SERVICE

Service of the foregoing and within case accepted in apt time. This the 31 day of March, 1969.

/s/ WILLIAM C. GRIFFIN, JR.
Solicitor

STIPULATION OF COUNSEL

The undersigned attorneys for both the State and the defendants stipulate that the foregoing is a true and correct copy of the transcript of the record and evidence in this case.

/s/ WILLIAM C. GRIFFIN, JR.
Solicitor
CHAMBERS, STEIN,
FERGUSON & LANNING

By: JAMES C. FERGUSON, II
Attorneys for Defendant

(TRANSCRIPT CERTIFIED BY
CLERK SUPERIOR COURT)

A TRUE COPY:

/s/ Adrian J. Newton
Clerk of Supreme Court of North Carolina

[SEAL]

SUPREME COURT OF NORTH CAROLINA
SECOND DISTRICT

Fall Term 1969

No. 15

From Hyde

IN RE: BARBARA BURRUS, SARA WHITNEY, DARLENE MCCOY, NINA WHITNEY, DORENE HARRIS, PATRICIA COLLINS, DOLLIE GIBBS, MARIA HARRIS, JULIA ANNA COLLINS, CHERLYN WHITNEY, CATHERINE GIBBS, DEBORAH ANN COLLINS, MARIA HARRIS, EDDIE WHITLEY, ALONZO EDWARD HOLLOWAY, EVELYN EVANGELINE GIBBS, ROSE MARY COLLINS, DEBRA COLLINS, CATHERINE GIBBS, JULIE ANNA COLLINS, SUDIE BELL MCCULLOR, BARBARA BURRUS, WILLIAM BLOUNT, NEKOLA GREEN, SHARON HARRIS, SARAH ANNETTE WHITNEY, WALTER ANTHONY GREEN, DESSIE HARRIS, EVELYN GIBBS, RONNIE LEE TOPPING, TYRONE DUDLEY, THERESA BLOUNT, LINDA SUE GIBBS, PATRICIA COLLINS, DONALD WHITE, WILMA JOYCE WHITAKER, JAMES LAMBERTH HOWARD, ROSE MARY WHITNEY, CHERLYN D. WHITNEY, TRINA SELBY, ALONZO EDWARD HOLLOWAY

NOTICE OF APPEAL

NOTICE OF APPEAL (Filed 6-9-69)

TO: The North Carolina Court of Appeals,
Raleigh, North Carolina
The North Carolina Supreme Court
Raleigh, North Carolina

The Honorable Robert Morgan
Attorney General
Raleigh, North Carolina

Please take notice that the respondents-appellants in the above captioned case, by and through their under-

signed counsel, pursuant to North Carolina General Statute 7A-30(1) hereby give notice of appeal of the decision in the above captioned case, filed by the North Carolina Court of Appeals on May 28, 1969.

As grounds for this appeal, respondent juveniles allege that their rights under the Constitution of the United States and the Constitution of the State of North Carolina have been violated in the following particulars:

1. Respondent-juveniles' rights secured to them by the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 13 and 17 of the Constitution of the State of North Carolina have been violated in that the Juvenile Court denied their motions for a trial by jury. The decision of the North Carolina Court of Appeals affirming this action of the Juvenile Court is erroneous as a matter of law.

2. The respondent juveniles' rights secured to them by the Sixth and Fourteenth Amendments to the Constitution of the United States and and Article I Sections 17 and 35 of the Constitution of the State of North Carolina were violated in that they were denied the right to a public trial by the trial court's exclusion of the public from the hearing at which these juveniles were adjudicated delinquent. The decision of the North Carolina Court of Appeals affirming this action of the Juvenile Court is erroneous as a matter of law.

3. The respondent juveniles' rights secured to them by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 17 of the Constitution of the State of North Carolina were violated in that these juveniles were tried under a statute, namely Chapter 110 Article II of the General Statutes of North Carolina, which is unconstitutionally vague and overbroad and which permits one who is adjudicated delinquent to be confined in a State institution for an indefinite period of time and which authorizes longer periods of confinement for a juvenile found to be in violation of a criminal statute than for an adult found to be in violation of the same statute. The failure of the North Carolina Court

of Appeals to declare the statute unconstitutional on its face and as applied is erroneous as a matter of law.

4. The juveniles-respondents' right to counsel secured to them by the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I Section 17 of the Constitution of the State of North Carolina were violated in that the juvenile court denied the juveniles' request for leave to appeal *in forma pauperis* and refused to permit the parents of the juveniles or persons standing *in loco parentis* to take the stand and testify as to their indigency in support of the request for an *in forma pauperis* appeal. The decision of the North Carolina Court of Appeals upholding this action of the juvenile court is erroneous as a matter of law.

The foregoing constitutional questions were timely raised and passed upon by the District Court of Hyde County and the North Carolina Court of Appeals and the rulings of the trial court and the Court of Appeals were erroneous as a matter of law.

Respectfully submitted,

CHAMBERS, STEIN,
FERGUSON AND LANNING

By: JAMES E. FERGUSON, II

ACCEPTANCE OF SERVICE

Service of Notice of Appeal is hereby accepted in apt time.

RALPH MOODY
Deputy Attorney General

OPINION OF NORTH CAROLINA COURT OF APPEALS, No. 692DC256, Spring Session, 1969, Filed 5-28-69

APPEALS from WARD, J., Juvenile Session, 9 January 1969, Hyde County District Court.

Each of these forty-four cases arose out of separate petitions charging each juvenile with various wilful and unlawful acts committed in Hyde County on different dates and different occasions. The petitions requested that the district court, sitting as the juvenile court, hear and determine each case and "if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State."

In some instances, more than one petition was filed charging the same juvenile with different wilful and unlawful acts committed on different dates and different occasions.

In general, these juveniles, who were under the age of sixteen, placed themselves upon the main public thoroughfares in the county seat of Hyde County for the purpose of blocking and stopping vehicular traffic on said thoroughfares. On other occasions, they disturbed the public schools and defaced and destroyed school property.

The petitions set out in particular the accusations against each juvenile, a typical charge being as follows:

> "'That the facts and circumstances supporting this Petition for Court action as follows:
>
> That at and in the County named above on or about Dec. 6, 1968 the defendant above named did intentionally, unlawfully and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease

their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.'"

Pursuant to these forty-four separate petitions, forty-four juvenile summonses were issued, one for each child and the parents or other person having custody of the child to appear before the judge of the juvenile court for a hearing on the petition alleging delinquency. Different days for the various hearings were set and the place for the hearings was specified.

The same counsel appeared in all forty-four cases for the juveniles.

Upon motion of counsel for the juveniles, these forty-four cases were divided into nine groupings, with each grouping containing from one to thirteen cases.

At the time and place appointed, District Court Judge Ward conducted a hearing, at the commencement of which he ordered the general public excluded from the hearing room. He stated that he was going to conduct a juvenile hearing, not a criminal trial, and that no child would be found to have committed a crime. He thereupon ordered the general public excluded from the hearing room and stated that only officers of the court, the juveniles, their parents or guardians, their attorney and witnesses would be present for the hearing. Judge Ward further stated that only the juvenile cases would be heard and that no other court business would be conducted. He then stated:

"All records may be withheld from indiscriminate public inspection in the discretion of the court but such record shall be open to inspection by the par-

ents, guardians or other authorized representatives of the child concerned. No adjudication shall operate as a disqualification of any child for any public office and no child shall be denominated a criminal by reason of such adjudication nor shall any such adjudication be denominated a conviction. Our Supreme Court has stated that the express intention of this statute is that in all proceedings under its provisions the court shall proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the court should give such child under the circumstances disclosed in the case. Moreover, any order of judgment made by the court in the case of any child should be subject to such modification from time to time as the court may consider to be for the welfare of the child. In other words and to summarize, this is not a criminal case but is a hearing to determine whether these children or any of them are delinquent and in need of the protection and guidance of the State."

In each instance, counsel for the juveniles requested a jury trial, but the requests were denied.

At the conclusion of the various hearings, judgments were entered, a typical judgment being as follows:

"This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the court having heretofore explained to the child and to Pencie Collins, her mother, the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Furgerson, II, Esq., Attorney of record; and it having been agreed to by the said James E. Furgerson, II, and Hon. Herbert Small, Solicitor for this the First Solicitorial District, that this matter should be consolidated with 69-J-11; 69-J-12; 69-J-14; 69-J-16; 69-J-

28; 69-J-29, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the court, and the court finding as a fact, that on or about the 13th day of November, 1968, the said child did in the company of others go upon the traveled portion of a main highway in Swan Quarter, N. C., and did block and impede traffic, and after being removed from said traveled portion of said highway, did return and block and impede traffic—all said acts having been wilfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the court and the court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Debra Ann Collins be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation;

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his

designated agent, at least once each month at a time and place designated by said Director;

3. That said child be at her residence by 11:00 o'clock p.m. each evening.

4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD"

From the entry of the judgments in the forty-four cases, each juvenile appealed to this Court.

ATTORNEY GENERAL ROBERT MORGAN AND DEPUTY ATTORNEY GENERAL RALPH MOODY FOR THE STATE

JAMES E. FERGUSON, II, FOR DEFENDANTS, APPELLANTS.

CAMPBELL, J. Despite the nine separate groupings and consolidations of cases in the juvenile court, the juveniles, in utter disregard of the Rules of Practice in the Court of Appeals or in any appellate court, lumped the forty-four cases together into one record which was filed with this court. It would be entirely proper to dismiss these appeals for failure to present a proper record. Rule 48 of the Rules of Practice in the Court of Appeals. However, we have nevertheless undertaken to review and to dispose of the cases.

All of the cases stem from what may be classified as a concerted demonstration by Negroes of Hyde County to assert their defiance of law and order to disrupt the normal economic and social life of Hyde County by a wilful, intentional and flagrant disregard and violation of laws duly enacted by the governing bodies of the State for the public welfare and orderly conduct of human affairs for all citizens of the State.

The forty-four cases have certain common features which may be considered in an effort to determine the legal questions presented. Counsel for the juveniles, both at the time of oral argument and later in writing, stated that all exceptions were withdrawn and abandoned, except for the four legal questions which are common to each case. In view of this withdrawal and abandonment, this court agreed to hear and decide these questions, despite the failure to comply with the proper appellate procedures as above stated.

The four questions are: 1. Is a jury trial required in a juvenile court proceeding? 2. Is a public trail required in a juvenile court proceeding? 3. Is the North Carolina Juvenile Courts Act unconstitutional because of vagueness? 4. Did the juvenile court commit error by preventing an appeal *in forma pauperis?*

The first question presented for determination is whether a jury trial is required in a juvenile court proceeding. In support of their argument that a jury trial is required, the juveniles rely upon RE WHITTINGTON, 391 US 341, 20 L Ed 625, 88 S Ct 1507; DUNCAN v LOUISIANA, 391 US 145, 20 L Ed 2d 491, 88 S Ct 1444; RE GAULT, 387 US 1, 18 L Ed 2d 527, 87 S Ct 1428.

While DUNCAN involved the right to a jury trial, it did not involve juveniles or a juvenile court proceeding. Therefore, the case may be dismissed from further consideration. WHITTINGTON did not make any judicial determination and it merely referred the matter back to the Ohio Court for consideration in light of GAULT. Therefore, the only authority to substantiate their argument is GAULT, which considered in some depth juvenile court proceedings. In reviewing the history of such proceedings in the light of whether they complied with due process of law, the United States Supreme Court stated:

> "It is claimed that juveniles obtained benefits from the special procedures applicable to them which more than offset the disadvantages of denial of the substance of normal due process. As we shall dis-

cuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process. But it is important, we think, that the claimed benefits of the juvenile process should be candidly appraised. . .

. . .

. . . We do not mean by this to denigrate the juvenile court process or to suggest that there are not aspects of the juvenile system relating to offenders which are valuable. But the features of the juvenile system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication. For example, the commendable principles relating to the processing and treatment of juveniles separately from adults are in no way involved or affected by the procedural issues under discussion. Further, we are told that one of the important benefits of the special juvenile court procedures is that they avoid classifying the juvenile as a 'criminal.' The juvenile offender is now classed as a 'delinquent.' There is, of course, no reason why this should not continue. It is disconcerting, however, that this term has come to involve only slightly less stigma than the term 'criminal' applied to adults. It is also emphasized that in practically all jurisdiction, statutes provide that an adjudication of the child as a delinquent shall not operate as a civil disability or disqualify him for civil service appointment. There is no reason why the application of due process requirements should interfere with such provisions."

The United States Supreme Court went on to point out that juvenile hearings must measure up to the essentials of due process and fair treatment. In so holding it was stated that such hearings need not conform to all of the requirements of a criminal trial or even of the usual administrative hearing. However, certain requirements must be followed in order to measure up the essentials of due process and fair treatment. Proper notice must be

given to both the juvenile and his parents, that is "(n)otice which would be deemed constitutionally adequate in a civil or criminal proceeding." Likewise, the United States Supreme Court held that a juvenile was entitled to counsel and "(t)he child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child." It was then held that the rights of confrontation and cross examination and the privilege against self-incrimination must be observed in a juvenile court proceeding. The United States Supreme Court stated:

> "We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique. . ."

The United States Supreme Court further stated:

> ". . . a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross examination in accordance with our law and constitutional requirements."

GAULT was not decided by a unanimous court. There were two concurring opinions and one dissenting opinion. Another opinion concurred in part and dissented in part.

There is certainly nothing in GAULT to support the argument that a jury trial is required in juvenile court proceedings. On the contrary, the decision clearly shows that juvenile court proceedings are not to be considered as criminal cases and they are not to be held to the requirements of a criminal case. Juvenile court proceedings are to continue as distinct and separate proceedings. While the essentials of due process and fair treatment are to be maintained, this does not by any means require a jury trial. In the instant case, all of the hearings conducted by Judge Ward measured up to the essentials of

due process and fair treatment, as those terms were used and applied in GAULT.

In COMMONWEALTH v JOHNSON, 211 Pa Super. 62, 234 A 2d 9, the Pennsylvania Superior Court reviewed the GAULT decision and rejected the position that a jury trial must be afforded in a juvenile court proceeding. It was stated:

> "The National Crime Commission Report, supra, to which the Supreme Court frequently referred in GAULT, contains the following significant statement: 'Most States do not provide jury trial for juveniles. Even Illinois, New York and California, which have recently revised their juvenile court laws to increase procedural safeguards for the child, have not extended the right to trial by jury. There is much to support the implicit judgment by these states that trial by jury is not crucial to a system of juvenile justice. AS THIS REPORT HAS SUGGESTED, THE STANDARD SHOULD BE WHAT ELEMENTS OF PROCEDURAL PROTECTION ARE ESSENTIAL FOR ACHIEVING JUSTICE FOR THE CHILD WITHOUT UNDULY IMPAIRING THE JUVENILE COURT'S DISTINCTIVE VALUES. (Emphasis added)
>
> 'As has been observed, "A jury trial would inevitably bring a good deal more formality to the juvenile court without giving the youngster a demonstrably better fact-finding process than trial before a judge."'
>
> In summary, we are in full agreement with the holding of the Supreme Court that the constitutional safeguards of the Fourteenth Amendment guaranteed to adults must similarly be accorded juveniles. It is inconceivable to us, however, that our highest court attempted, through GAULT, to undermine the basic philosophy, idealism and purposes of the juvenile court. We believe that the Supreme Court did not lose sight of the humane and beneficial elements of the juvenile court system; it did not ignore the

> need for each judge to determine the action appropriate in each individual case; it did not intend to convert the juvenile court into a criminal court for the young people. Rather, we find that the Supreme Court recognized that juvenile courts, while acting within the constitutional guarantees of due process, must, nonetheless, retain their flexible procedures and techniques. The institution of jury trial in juvenile court, while not materially contributing to the fact-finding function of the court, would seriously limit the court's ability to function in this unique manner, and would result in a sterile procedure which could not vary to meet the needs of delinquent children. Accordingly, we reject appellant's request for a jury trial."

In passing on this specific question, the North Carolina Supreme Court has held that the constitutional guarantee of a right to trial by jury does not apply in juvenile court proceedings. STATE v FRAZIER, 254 NC 226, 118 SE 2d 556. Therefore, it follows that, since neither the Constitution of the United States as interpreted by the United States Supreme Court nor the Constitution of North Carolina as interpreted by the North Carolina Supreme Court requires a jury trial in a juvenile court proceeding, the first question is answered in the negative.

The second question presented for determination is whether a public trial is required in a juvenile court proceeding. As previously pointed out, Judge Ward ordered the general public excluded from the hearing room and stated that only officers of the court, the juveniles, their parents or guardians, their attorney and witnesses would be present for the hearing. He then announced that only the juvenile cases would be heard and that no other court business would be conducted. This was in keeping with the provisions of the North Carolina Juvenile Courts Act.

Counsel for the juveniles has furnished no authority to support a holding that GS 110-24 is unconstitutional in that it provides for the exclusion of the general public from a juvenile hearing. The provision is certainly not

unfair or lacking in due process. The objectives of the North Carolina Juvenile Courts Act are to provide measures of guidance and rehabilitation for the child and to provide protection for society. It does not seek to fix criminal responsibility, guilt and punishment. The exclusion of the general public from such a hearing is deemed to be beneficial for the rehabilitation of the child involved. In the instant case, it is true that such a provision thwarted the hopes and desires of those instigating and promoting these unfortunate children in their public demonstrations. The deprivation of a public forum to further their misguided and antisocial conduct does not make it wrong or illegal in a constitutional sense.

A public trial is not required in a juvenile court proceeding. Therefore, the second question is answered in the negative.

The third question presented for determination is whether the North Carolina Juvenile Courts Act is unconstitutional because of vagueness. Art. 2 of Chap. 110 of the General Statutes of North Carolina provides for juvenile courts and for the procedure therein. Exclusive original jurisdiction of a child less than sixteen years of age is provided for as follows:

> "(1) Who is delinquent or who violates any municipal or State law or ordinance or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so; or
>
> "(2) Who is neglected, or who engages in any occupation, calling, or exhibition, or is found in any place where a child is forbidden by law to be and for permitting which an adult may be punished by law, or who is in such condition or surroundings or is under such improper or insufficient guardianship or control as to endanger the morals, health, or general welfare of such child; or
>
> "(3) Who is dependent upon public support or who is destitute, homeless, or abandoned, or whose custody is subject to controversy.
>
> "When jurisdiction has been obtained in the case of any child, unless a court order shall be issued to

> the contrary, or unless the child be committed to an institution supported and controlled by the State, it shall continue for the purposes of this article during the minority of the child. The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the State."

The juveniles assert that the statute is void because of vagueness and uncertainty and because it requires one to guess as to its meaning. This same contention was made in STATE v WIGGINS, 272 NC 147, 158 SE 2d 37, with regard to another statute. The North Carolina Supreme Court stated:

> "It is elementary that in the construction of a statute words ought to be given their plain and ordinary meaning unless the context, or the history of the statute, requires otherwise. . ."

The words in Art. 2 of Chap. 110 have well-defined meanings and have been construed time and time again in decisions dealing with juvenile courts. The provisions of this article have been upheld by the North Carolina Supreme Court.

Suffice it to say that the North Carolina Juvenile Courts Act is not unconstitutional because of any vagueness. WINNER v BRICE, 212 NC 294, 193 SE 400. Therefore, the third question is answered in the negative.

The fourth question presented for determination is whether the juvenile court committed error by preventing an appeal *in forma pauperis*. The record in the instant case reveals the following:

> "COURT: Do you wish to note any appeal?
>
> MR. FERGUSON: Yes, and I would like 60 days in which to prepare the case on appeal.
>
> COURT: I am afraid that this is too much time, too much time under the rules.
>
> MR. FERGUSON: I would also like to be allowed to proceed in forma pauperis.

COURT: I am afraid that I cannot allow that simply upon your request. We should examine the statutes, however; I am willing, if I can, to allow you to proceed without an appeal bond. EXCEPTION NO. 16

MR. FERGUSON: You might permit me to have the parents sworn and treat the testimony as an affidavit.

COURT: I am afraid that I cannot do that. EXCEPTION NO. 17. I am going to suggest that you dictate your own appeal entries in whatever fashion you deem appropriate and I will sign whatever you dictate."

As the above excerpt reveals, even after Judge Ward suggested to counsel for the juveniles that the statutes be examined in order to comply with the statutory procedure for an appeal *in forma pauperis*, counsel failed to look at said statutes and did not in any way comply with the procedure provided by law for an appeal *in forma pauperis*.

It was not error for Judge Ward to suggest to counsel for the juveniles that the statutory procedure pertaining to an appeal *in forma pauperis* be complied with. Since such procedure was not complied with by the juveniles, no error was committed. Therefore, the fourth question is answered in the negative.

There being no error in the trial of these cases in the juvenile court, the various judgments in the forty-four cases are

AFFIRMED.

We concur MALLARD, C.J. and MORRIS, J.

A TRUE COPY:

/s/ Adrian J. Newton
Clerk of Supreme Court of North Carolina.

[SEAL]

SUPREME COURT OF NORTH CAROLINA
SECOND DISTRICT

Fall Term 1969

No. 15

From Hyde

IN RE: SELMA SHELTON (69-J-32)
JOHN GREEN CUNNINGHAM (69-J-33)

NOTICE OF APPEAL

NOTICE (Filed in Supreme Court Aug. 15, 1969)

TO: The North Carolina Court of Appeals
Raleigh, North Carolina

The North Carolina Supreme Court
Raleigh, North Carolina

The Honorable Robert Morgan
Attorney General
Raleigh, North Carolina

Andrew A. Vanore, Jr., Staff Attorney
Attorney General's Office
Raleigh, North Carolina

Please take notice that the respondents-appellants in the above-captioned case, by and through their undersigned counsel, pursuant to North Carolina General Statute 7A-30(1), hereby give notice of appeal of the decision in the above-captioned case filed by the North Carolina Court of Appeals on July 23, 1969. Grounds for this appeal: respondents juveniles allege that their rights under the Constitution of the United States and the Constitution of the State of North Carolina have been violated in the following particulars:

1. The respondent juveniles' rights secured to them by the due process and equal protection clauses of the

Fourteenth Amendment to to the Constitution of the United States and Article I, Section 17 of the North Carolina Constitution were violated in that these juveniles were tried under a statute, namely, Chapter 110, Article II of the General Statutes of North Carolina, which is unconstitutionally vague and overbroad and which permits one who is adjudicated a delinquent to be confined in a state institution for an indefinite period of time and which authorizes a longer period of confinement for a juvenile found to be in violation of a criminal statute than for an adult found to be in violation of the same statute. Failure of the North Carolina Court of Appeals to declare the statute unconstitutional on its face and as applied is erroneous as a matter of law.

2. The respondent juveniles' rights secured to them by the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 13 and 17 of the Constitution of the State of North Carolina were violated in that the juvenile Court denied their motions for a trial by jury. The decision of the North Carolina Court of Appeals affirming this action of the juvenile Court is erroneous as a matter of law.

The following constitutional questions were timely raised and passed upon by the District Court of Hyde County and the North Carolina Court of Appeals and the rulings of the trial court and the Court of Appeals are erroneous as a matter of law.

Respectfully submitted,

/s/ JAMES E. FERGUSON, II
CHAMBERS, STEIN,
FERGUSON AND LANNING
Attorneys for
Respondents-Appellants

OPINION OF NORTH CAROLINA COURT OF APPEALS, No. 692DC300, Spring Session 1969, Filed 7-23-69

Appeal by respondents from WARD, District Judge, January 1969 Juvenile Session, District Court of Hyde County, Division of the General Court of Justice.

ATTORNEY GENERAL ROBERT MORGAN AND STAFF ATTORNEY ANDREW A. VANORE, JR. FOR THE STATE.

CHAMBERS, STEIN, FERGUSON AND LANNING BY JAMES E. FERGUSON, II FOR RESPONDENTS.

MALLARD, C.J. These matters were heard separately on 21 January 1969. Evidence was taken separately. There has been no order entered consolidating these proceedings for a hearing. See Rule 14 of the Rules of Practice in the Court of Appeals. Under Rule 48 it would be entirely proper to dismiss the appeal, however, we decide the proceedings on their merits.

In a juvenile petition, #69-J-32, the respondent Selma Shelton, of Rt. 1, Swan Quarter, was alleged to be under 16 years of age and in need of the care, protection or discipline of the State. In the petition, it is alleged, in substance, that such need was demonstrated and evidenced by the conduct of the respondent on 14 November 1968 in unlawfully, wilfully, and intentionally blocking, obstructing, and impeding the flow of traffic on the State Highway and street passing through and traversing the community of Swan Quarter, in violation of G.S. 20-174.1. The evidence tended to show that at the time thereof this respondent was one of a group of twenty-three females and eleven males engaged in such conduct.

In another juvenile petition, #69-J-33, the respondent John Green Cunningham, of Rt. 1, Engelhard, was alleged to be under 16 years of age and in need of the care, protection or discipline of the State. In the petition, it is alleged, in substance, that such need was demonstrated and evidenced by the conduct of the respondent on 12 November 1968 in unlawfully, wilfully

and intentionally blocking, obstructing, and impeding the flow of traffic on the State Highway and street passing through and traversing the community of Swan Quarter, in violation of G.S. 20-174.1. The evidence tended to show that at the time thereof this respondent was one of a group of twenty-six persons engaged in such conduct.

After the hearings, a separate, but almost identical order of custody was entered declaring each to be a delinquent in need of more suitable guardianship. In each of the orders of custody, it is provided that the respondent:

> "is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the Superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, consistent with the laws of this State; this commitment is suspended and said child placed upon probation for twelve months, under these special conditions of probation:
>
> 1. That said child violate none of the laws of North Carolina for 12 months;
> 2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
> 3. That said child be at his residence by 11:00 P.M. each evening;
> 4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.
>
> This matter is retained pending further order of the Court."

The respondents contend that the North Carolina Juvenile Statute as contained in Article II of Chapter 110 of the General Statutes is unconstitutional.

Respondents also contend that their constitutional rights were violated because they were not afforded jury trials.

These questions in identical language were raised and decided contrary to respondent's contentions in the case of *In Re Burrus*, 4 N.C. App. 523, —— S.E. 2d —— (1969).

In *Burrus* the factual situation was almost the same as here. The evidence in both tended to show that groups of children were permitted or allowed by their parents or persons *in loco parentis* to gather together in gangs and roam up and down the streets and highways intentionally and wilfully blocking and impeding the flow of traffic to the harassment of all the people at that time lawfully using those particular streets and highways in Hyde County.

For the reasons enunciated in *Burrus*, we are of the opinion and so hold that the North Carolina Juvenile Statute as contained in Article II of Chapter 110 of the General Statutes is not unconstitutional, and that the constitutional rights of the respondents were not violated because they were not afforded a jury trial.

AFFIRMED.

BRITT and PARKER, JJ., concur.

PETITION

(Filed 8/15/69)

Come now the juvenile respondents in the above-captioned matter, by and through their undersigned counsel, pursuant to Rule 14 of the Rules of the North Carolina Supreme Court, and respectfully petition the Court for an order providing that the above-captioned case be heard

and argued together with the case of In Re: Barbara Burrus, et al., Number 15, and as grounds therefor, respectfully show the Court the following:

1. The case of In Re: Barbara Burrus, et al, Number 15, was decided by the North Carolina Court of Appeals on May 28, 1969 and thereafter, pursuant to North Carolina General Statute 7A-30(1), notice of appeal was filed.

2. In paragraphs 1 and 3 of the said notice of appeal in In Re: Burrus, issues identical to the issues raised in this appeal were raised.

3. A brief has been timely filed in the Supreme Court of North Carolina in the case of In Re: Burrus, setting forth the arguments applicable to the issues raised in the instant appeal. The oral argument in In Re: Burrus has not been set and is pending in the Supreme Court of North Carolina.

4. Counsel in this appeal is also counsel in the appeal involved in In Re: Burrus. Counsel has reviewed the record and brief in In Re: Burrus and the record in the instant case and is of the opinion that the contentions of the juvenile respondents in the instant case and the contentions of the juvenile respondents in In Re: Burrus can be fully, adequately and effectively presented to the Court if heard together as one case. Counsel is further of the opinion that the interests of justice and the expedient administration of the system of justice will be served if these cases are heard together as one appeal.

WHEREFORE, juvenile respondents respectfully pray the Court that the above-captioned case be heard together as one appeal with the case of In Re: Burrus, Number 15, in the Supreme Court of North Carolina.

Respectfully submitted,

/s/ JAMES E. FERGUSON, II
CHAMBERS, STEIN,
FERGUSON AND LANNING
Attorneys for
Respondents-Appellants

ORDER TO CONSOLIDATE THIS CASE WITH CASE OF IN RE: BURRUS, ET AL

It appearing to the Court that the factual situation here is substantially identical to the factual situation in the case of In Re: Burrus, et al (No. 15, Fall Term 1969),

IT IS ORDERED that this case be consolidated with the case of In Re: Burrus, et al, advanced on the calendar, and heard as one appeal on Wednesday, 10 September 1969.

By order of the Court in conference on 26 August 1969.

/s/ HUSKINS
For the Court

A TRUE COPY:

/s/ Adrian J. Newton
Clerk of Supreme Court of North Carolina

[SEAL]

JUDGMENT

SUPREME COURT OF NORTH CAROLINA
HYDE COUNTY

No. 1544 Misc., Fall Term, 1969

No. 15

IN RE: BARBARA BURRUS

vs.

This cause came on to be argued upon the transcript of the record from the North Carolina Court of Appeals:

Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Court of Appeals.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable J. FRANK HUSKINS Justice, be certified to the said North Carolina Court of Appeals, to the intent that the JUDGMENT BE AND THE SAME IS HEREBY MODIFIED AND AFFIRMED AS INDICATED IN SAID OPINION. And it is considered and adjudged further, that the RESPONDENTS DO PAY the costs of the appeal in this Court incurred, to wit, the sum of ***TWENTY-THREE AND 20/100*** dollars ($23.20), and execution issue therefor. Certified to North Carolina Court of Appeals this 27th day of October 1969, and a copy of this transcript to the Clerk of the Superior Court of Hyde County for docketing as a judgment in his office.

A TRUE COPY

ADRIAN J. NEWTON
Clerk of the Supreme Court

By: /s/ Frances P. Randolph
FRANCES P. RANDOLPH
Deputy Clerk

IN THE SUPREME COURT OF NORTH CAROLINA

FALL TERM 1969

No. 15

Hyde

IN RE: BARBARA BURRUS (69-J-17), SARAH WHITNEY (69-J-18), DARLENE MCCOY (69-J-19), NINA WHITNEY (69-J-20), DORENE HARRIS (69-J-21), PATRICIA COLLINS (69-J-22), DOLLIE GIBBS (69-J-23), MARIA HARRIS (69-J-24), TRINA SELBY (69-J-1), DORENE HARRIS (69-J-3), JULIA ANNA COLLINS (69-J-4), CHERLYN WHITNEY (69-J-5), CATHERINE GIBBS (69-J-6), DEBORAH ANN COLLINS (69-J-8), MARIA HARRIS (69-J-9), EDDIE WHITLEY (69-J-10), ALONZO EDWARD HOLLOWAY (69-J-30), EVELYN EVANGELINE GIBBS (69-J-11), ROSE MARY COLLINS (69-J-12), DEBRA ANN COLLINS (69-J-13), CATHERINE GIBBS (69-J-14), JULIA ANNA COLLINS (69-J-16), ELVIRA VASHTI WESTON (69-J-28), SUDIE BELL MCCULLOR (69-J-29), BARBARA BURRUS (68-J-4), WILLIAM BLOUNT (68-J-5), NEKOLA GREEN (68-J-6), SHARON HARRIS (68-J-7), SARAH ANNETTE WHITNEY (68-J-8), WALTER ANTHONY GREEN (68-J-9), DESSIE HARRIS (68-J-10), EVELYN GIBBS (68-J-11), RONNIE LEE TOPPING (68-J-12), TYRONE DUDLEY (68-J-13), THERESA BLOUNT (68-J-14), LINDA SUE GIBBS (68-J-15), PATRICIA COLLINS (69-J-27), DONALD WHITE (69-J-25), WILMA JOYCE WHITAKER (69-J-26), JAMES LAMBERT HOWARD (68-J-3), ROSE MARY WHITNEY (69-J-15), CHERLYN D. WHITNEY (69-J-2), TRINA SELBY (69-J-7), ALONZO EDWARD HOLLOWAY (69-J-31), SELMA SHELTON (69-J-32), JOHN GREEN CUNNINGHAM (69-J-33)

Appeals by respondents from decision of the Court of Appeals affirming judgments of Ward, J., entered at the 9 and 21 January 1969 Juvenile Sessions, Hyde County District Court.

These cases, more than forty in number, were consolidated by consent for hearing in the Juvenile Court of Hyde County. On appeal to the Court of Appeals they were lumped into one record. Upon appeal to this Court

it was made to appear that the factual situation in two additional cases involving the juveniles Selma Shelton and John Green Cunningham was substantially identical to the factual situation in the case of In Re Burrus, et al, and this Court ordered a consolidation and heard all the cases as one appeal.

All persons involved in these proceedings are juveniles residing in Hyde County, North Carolina. On six different occasions in November and December, 1968, these juveniles (with the exception of James Lambert Howard) were observed by State Highway Patrolmen standing upon the public highway tossing a basketball back and forth and singing, clapping, and marching. "Between September 11th and November 13th they marched practically every day." As a result, vehicular traffic was prevented from proceeding in either direction. The juveniles and numerous adults were asked to remove themselves from the road to allow traffic to pass. They either refused to do so or left the roadway and immediately returned. Said juveniles, with numerous adults who were also participating in the unlawful conduct, were then taken into custody. After ascertaining the juveniles herein named to be under sixteen years of age the officers obtained juvenile petitions. The following petition in re Barbara Burrus is substantially identical to the petitions in all cases (except James Lambert Howard):

In the General Court of Justice
District Court Division

"STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
Barbara Burrus
Age 13
Box 83, Fairfield, N. C.

Charles Smith, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Lillie Mae Burrus	Mother	Box 83, Fairfield, N.C.
David Burrus	Father	Box 83, Fairfield, N.C.

3. That the facts and circumstances supporting this Petition for court action are as follows:

That at and in the county named above on or about Nov. 14, 1968, the defendant above named did intentionally, unlawfully, and willfully stand upon the traveled part or portion of a State highway and street passing through and traversing the community of Swan Quarter and did willfully, intentionally and unlawfully stand upon that portion of said highway and street used by the traveling public in the operation of automobiles, trucks and other motor vehicles in such a way and manner as to cause said motor vehicles being operated upon the traveled portion of said street and highway to stop and cease their traveling or operation and in some cases caused said motor vehicles and the operators of same to be detained, stop and cease operation and to force same, in some cases, to seek detours or other methods of traveling, all in such a way and manner as to obstruct, hinder, impair and stop the progress of said motor vehicles and their operators and to impede the regular flow and normal traffic of said motor vehicles and their operators upon said highway and street, contrary to the statute in such cases made and provided, the same being Section 20-174.1 of the General Statutes of North Carolina, and against the peace and dignity of the State.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 3 day of January, 1969.

/s/ SGT. CHARLES SMITH
Petitioner
S.H.P. Washington, N. C.

(Verified by Charles Smith, Petitioner, on 1-3-69.)"

Sergeant Rogers of the State Highway Patrol observed sixteen persons, including James Lambert Howard, in the Principal's office of the O. A. Peay School at 10:30 a.m. on December 5, 1968, while school was in session, yelling, piling objects against the windows, moving furniture including a metal cabinet, placing a bed against the door, emptying papers on the floor, turning chairs upside down, and generally littering the office with books, papers, a roll of electrical wire and other items of property belonging to the school. As a result, the school closed before noon. None of the sixteen were students or school personnel. All sixteen were taken into custody and a petition filed with respect to Howard in the following language:

In the General Court of Justice
District Court Division

"STATE OF NORTH CAROLINA
COUNTY OF HYDE

In the Matter of
James Lambert Howard
Age 15
P. O. Box 222, Engelhard, N. C.

Clyde Fentress, Petitioner, having sufficient knowledge or information to believe that the child named above (whether one or more) is in need of the care, protection or discipline of the State, alleges:

1. That said child is less than sixteen years of age, and is now residing within the territorial jurisdiction of the District Court for this County at the address shown above.

2. That the names of the parents, and of the person having the guardianship, custody or supervision of said child if other than a parent, are as follows:

Name	Relation	Address
Thad Howard	Father	P.O. Box 222 Engelhard, N.C.
Pearl Howard	Mother	P.O. Box 222 Engelhard, N.C.

3. That the facts and circumstances supporting this Petition for Court action are as follows:

That at and in the County named above on or about December 5, 1968 the defendant named above did unlawfully, willfully and intentionally and did knowingly, willfully, and unlawfully interrupt and disturb the O. A. Peay School, the same being a public school owned and operated by the Board of Education of Hyde County, and located in the community of Swan Quarter, North Carolina, and being a public building, by uttering rude and riotous noises and shouts and by engaging in acts of disorderly conduct in and near said public school building, owned and operated by the Board of Education of Hyde County, which said unlawfully, rude and riotous noises, shouts and other disorderly conduct in and near public school building interrupted and disturbed the operation of said public school.

And, the said Clyde Fentress, complainant as aforesaid, upon oath further alleges that the said defendant, James Lambert Howard, did further interrupt and disturb operation of a public school operated by the Board of Education of Hyde County, the same being the O. A. Peay School, of the Community of Swan Quarter, by engaging in disorderly acts and conduct in and near said public school by seizing and scattering the papers, books and other equipment of said school and by defacing, injuring

and damaging the public school furniture and other educational equipment of the said O. A. Peay School, owned and operated by the Board of Education of Hyde County, all of which occurred while said public school was in regular session and performing the educational functions administered by said Board of Education.

All of the above riotous and disorderly interruptions and disturbances being contrary to the statutes made and provided, the same being Sections 14-132 and 14-273 of the General Statutes of North Carolina, and contrary to the peace and dignity of the State.

Petitioner, therefore, prays the court to hear and determine this case, and, if need be found, to give said child such oversight and control as will promote the welfare of such child and the best interest of the State.

This 5th day of December, 1968.

/s/ C. O. FENTRESS S.B.I.
Petitioner
Washington,
North Carolina

(Verified by C. O. Fentress, Petitioner, on 12-5-68.)"

Summonses were duly issued in each proceeding and at the same time and place named therein the District Court judge conducted a hearing at the commencement of which he ordered the general public excluded from the room. The judge stated that he was preparing to conduct a juvenile hearing—not a criminal trial, and that no child would be found to have committed a crime. He thereupon ordered the general public excluded and stated that only officers of the court, the juveniles, their parents or guardians, their attorney and witnesses would be present for the hearing. Judge Ward further announced that only the juvenile cases would be heard and that no other court business would be conducted. In each instance,

counsel for the juveniles objected to the exclusion of the general public and demanded a jury trial. The objection was overruled and request for jury trial denied.

At the conclusion of the various hearings, Judge Ward entered the following "Order of Commitment and Probation" with respect to Barbara Burrus:

> "This matter, coming on to be heard, and being heard at this regularly calendared session of Juvenile Court for the County of Hyde convened this 9th day of January, 1969; and the Court having determined that said child is under sixteen (16) years of age and is a resident of Hyde County, N. C.; and the Court having heretofore explained to the child and to Lillie Mae Burrus—her mother—the nature of this proceeding; as will appear in the minutes; and said child being represented by James E. Ferguson II, Esq., Attorney of Record; and it having been agreed to by the said James E. Ferguson, II and Hon. Herbert Small, Solicitor for this The First Solicitorial District, that this matter should be consolidated with 69-J-18; 69-J-19; 69-J-20; 69-J-21; 69-J-22; 69-J-23; 69-J-24, for hearing, findings and disposition and said attorneys having further agreed that such consolidation is in no way prejudicial to said child and does not violate the spirit or intent of Article 2, Chapter 110 of the General Statutes of North Carolina; and it appearing to the Court, and the Court finding as a fact, that on or about the 14 day of November, 1968, the said child did in the company of others go upon one of the main traveled highways in Swan Quarter and did remain upon said traveled portion of said highway in a manner calculated to impede traffic—all of said acts having been willfully and intentionally done and designed to impede traffic, and that said acts constitute a violation of GS 20-174.1, an act for which an adult may be punished by law; and it further appearing to the Court and the Court being satisfied and finding as a fact that the said child is in need of the care, protection and discipline of the State, and is in need of more suitable guardianship and is delinquent;

It is now, therefore, ORDERED, ADJUDGED and DECREED that Barbara Burrus be, and she is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in GS 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State; this commitment is suspended and said child placed upon probation for 12 months, under these special conditions of probation:

1. That said child violate none of the laws of North Carolina for 12 months;
2. That said child report to the Director of the Hyde County Public Welfare Department, or his designated agent, at least once each month at a time and place designated by said Director;
3. That said child be at her residence by 11:00 o'clock P. M. each evening.
4. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

This matter is retained pending further order of the Court.

This 9th day of January, 1969.

/s/ HALLETT S. WARD"

Similar commitment and probation orders were entered with respect to all the other juveniles except James Lambert Howard. As to him the following "Order of Commitment and Probation" was entered:

"This matter coming on to be heard and being heard at this regularly calendared session of Juve-

nile Court for the County of Hyde convening this 10th day of January, 1969, the Court having determined that the juvenile is under sixteen (16) years of age, the Court having heretofore explained to the child and to Pearl Howard, the mother of the child, the nature of this proceeding, it appearing to the Court, and the Court finding as a fact that on or about the 5th day of December, 1968, the said child did, in the company of 15 others, enter without lawful authority the O. A. Peay School in Swan Quarter, North Carolina, and participate with others in making loud noises which were calculated to and did in fact disturb and disrupt said school which was then in session and did disarrange and disrupt an office in said school and did join with others in a course of conduct designed to cause a cessation of school activities and that said acts constitute a violation of GS 14-132 and GS 14-273; and it further appearing to the Court and the Court being satisfied and finding as a fact that said James Lambert Howard is in need of the care, protection and discipline of the State and is in need of more suitable guardianship, and is delinquent.

Now, it is therefore, ORDERED, ADJUDGED AND DECREED, that James Lambert Howard be, and he is hereby committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State (as said institutions may be enumerated in GS 134-91) and held by said institution for no definite term, but until such time as the Board of Juvenile Correction or the Superintendent of said institution shall determine, not inconsistent with the laws of this State. This commitment is suspended and said child placed on probation for 24 months:

1. That he violate no laws of the State of North Carolina for 24 months.

2. That he be at his residence by 11:00 P. M. each evening.

3. That said child attend some school, public or private, or some institution offering training approved by the Hyde County Director of Public Welfare.

4. That he report to the Director of the Hyde County Department of Public Welfare, or his designated agent at least once each month at a time and place designated by said Director.

This matter is retained pending further order of the Court.

This 10 day of January, 1969.

/s/ HALLETT S. WARD"

From the foregoing orders each juvenile through counsel appealed to the Court of Appeals which affirmed the judgments by decisions appearing in 4 N.C. App. 523, 167 S.E. 2d 454, and 5 N.C. App. 487, —— S.E. 2d ——. Respondents thereupon appealed to the Supreme Court, alleging involvement of substantial constitutional questions.

CHAMBERS, STEIN, FERGUSON AND LANNING by James E. Ferguson, II, Attorneys for Respondent Appellants.

ROBERT MORGAN, Attorney General, and RALPH MOODY, Deputy Attorney General, for the State.

HUSKINS, J. Four questions, preserved and brought forward, will be discussed in chronological order.

1. Under the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 17, of the Constitution of North Carolina, is a juvenile entitled to a jury trial in a juvenile court proceeding on the issue of his delinquency?

The Constitution of the United States, Article III, Section 2, reads in pertinent part as follows: "The trial of all crimes, except in cases of impeachment, shall be by jury. . . ." The Sixth Amendment thereto provides, *inter alia*: "In all criminal prosecutions the accused shall enjoy the right to a . . . trial, by an impartial jury. . . ."

The Constitution of North Carolina, Article I, Section 13, reads as follows: "No person shall be convicted of any crime but by the unanimous verdict of a jury. . . . The Legislature may, however, provide other means of trial, for petty misdemeanors, with the right of appeal."

Absent a statute providing for a jury trial, it is almost universally held that in juvenile court delinquency proceedings the alleged delinquent has no right under the pertinent State or Federal Constitution to demand that the issue of his delinquency be determined by a jury. See Annotation: Right to Jury Trial in Juvenile Court Delinquency Proceedings, 100 A.L.R. 2d 1241, where cases are collected from twenty-five states and the District of Columbia. "The view has generally been taken that statutes providing for the custody or commitment of delinquent or incorrigible children are not unconstitutional by reason of failure to provide for a jury trial, where the investigation is into the status and needs of the child, and the institution to which the child is committed is not a penal character. Thus it is held that a constitutional guaranty of trial by jury has no application to a proceeding under the juvenile court act." 31 Am. Jur., Juvenile Courts, etc. § 67; 50 C.J.S., Juries § 80. North Carolina follows the general rule. In Re Watson, 157 N.C. 340, 72 S.E. 1049; State v Burnett, 179 N.C. 735, 102 S.E. 711; State v Frazier, 254 N.C. 226, 118 S.E. 2d 556. Federal decisions to date have not changed it. Kent v United States, 383 U.S. 541, 16 L.ed 2d 84, 86 S.Ct. 1045; In Re Gault, 387 U.S. 1, 18 L.ed 2d 527, 87 S.Ct. 1428; Duncan v Louisiana, 391 U.S. 145, 20 L.ed 2d 491, 88 S.Ct. 1444; In Re Whittington, 391 U.S. 341, 20 L.ed 2d 625, 88 S.Ct. 1507. These cases enumerate the basic requirements of due process that must be satisfied in juvenile proceedings; however, the right to jury trial is not listed among them. We have not found and counsel has not cited any case supporting the right to jury trials in juvenile proceedings. We therefore adhere to our former decisions and hold that a juvenile is not entitled to a jury trial in a juvenile court proceeding on the issue of his delinquency.

2. Is a juvenile entitled to a public trial in a juvenile court proceeding on the issue of his delinquency?

The Sixth Amendment to the Federal Constitution provides, among other things, that "[i]n all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. . . ." Article I, Section 13, of the Constitution of North Carolina prohibits conviction of any crime except by jury verdict in "open court." This right to a public trial is now applicable in both state and federal courts by virtue of the Due Process Clause of the Fourteenth Amendment. "In view of this nation's historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public, the Fourteenth Amendment's guarantee that no one shall be deprived of his liberty without due process of law means at least that an accused cannot be thus sentenced to prison." In Re Oliver, 333 U.S. 257, 92 L.ed 682, 68 S.Ct. 499 (1948). The right of an adult charged with crime to be publicly tried is thus firmly established as a matter of constitutional law. See Annotation: Right to Public Trial in Criminal Case—Federal Cases, 4 L.ed 2d 2128.

Juvenile proceedings, however, stand in a different light. Whatever may be their proper classification, they certainly are not "criminal prosecutions." Nor is a finding of delinquency in a juvenile proceeding synonymous with "conviction of a crime." It has never been the practice in such proceedings, here or elsewhere, wholly to exclude parents, relatives or friends, or to refuse juveniles the benefit of counsel. Even so, such proceedings are usually conducted without admitting the public generally. See In Re Oliver, supra (333 U.S. 257, 266, note 12). So long as proceedings in the juvenile court meet the requirements of due process, they are constitutionally sound and must be upheld. This means that: (1) The basic requirements of due process and fairness must be satisfied in a juvenile court adjudication of delinquency. Kent v United States, supra (383 U.S. 541, 16 L.ed 2d 84, 86 S.Ct. 1045 (1966)); In Re Gault, supra (387 U.S. 1, 18 L.ed 2d 527, 87 S.Ct. 1428 (1967)).

(2) The Fourteenth Amendment applies to prohibit the use of a coerced confession of a juvenile. Haley v Ohio, 332 U.S. 596, 92 L.ed 224, 68 S.Ct. 302 (1948); Gallegos v Colorado, 370 U.S. 49, 8 L.ed 2d 325, 82 S.Ct. 1209, 87 A.L.R. 2d 614 (1962). (3) Notice must be given in juvenile proceedings which would be deemed constitutionally adequate in a civil or criminal proceeding; that is, notice must be given the juvenile and his parents sufficiently in advance of scheduled court proceedings to afford them reasonable opportunity to prepare, and the notice must set forth the alleged misconduct with particularity. In Re Gault, supra. (4) In juvenile proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to counsel and, if unable to afford counsel, to the appointment of same. In Re Gault, supra. (5) Juvenile proceedings to determine delinquency, as a result of which the juvenile may be committed to a state institution, must be regarded as "criminal" for Fifth Amendment purposes of the privilege against self-incrimination. The privilege applies in juvenile proceedings the same as in adult criminal cases. In Re Gault, supra.

We have been unable to find, and counsel has not cited, any case holding that a public hearing in juvenile proceedings is a constitutional requirement of due process. North Carolina has determined by statutory enactment that a public hearing is neither required nor in the best interest of the youthful offender. We adhere to that view. This assignment of error is therefore overruled.

3. Is the North Carolina Juvenile Court Act (Article 2 of Chapter 110 of the General Statutes) unconstitutional? Brief historical reference seems necessary and appropriate.

The District Court Division of the General Court of Justice was created by Chapter 310 of the 1965 Session Laws, effective in the First Judicial District (embracing Hyde County) on the first Monday in December 1966. G.S. 7A-130, 131. As thus created the district court has

exclusive, original jurisdiction over cases involving juveniles, "as such jurisdiction is set forth in chapter 110, article 2, of the General Statutes. This jurisdiction shall be exercised solely by the district judge." G.S. 7A-277.

Chapter 110, Article 2, of the General Statutes delineates the practices and procedures to be followed in juvenile cases. G.S. 110-21 provides in pertinent part that the superior court (now the district court by virtue of G.S. 7A-277) "shall have exclusive original jurisdiction of any case of a child less than sixteen years of age residing in . . . their respective districts: (1) Who is delinquent or who violates any . . . State law . . . or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so. . . ." This statute makes it the constant duty of the court to give each child subject to its jurisdiction such oversight and control as will conduce to the welfare of the child and to the best interest of the State. In Re Morris, 224 N.C. 487, 31 S.E. 2d 539. It deals with delinquent children as wards of the State and not as criminals. State v Burnett, 179 N.C. 735, 102 S.E. 711; State v Frazier, 254 N.C. 226, 118 S.E. 2d 556.

Appellants argue that the statute fails to define any of the operative terms such as "delinquent", "unruly", "wayward", "misdirected" and "disobedient" and contend that the statute is therefore void for vagueness and uncertainty.

It is settled law that a statute may be void for vagueness and uncertainty. "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." 16 Am. Jur. 2d, Constitutional Law § 552; Cramp v Board of Public Instruction, 368 U.S. 278, 7 L.ed 2d 285; 82 S.Ct. 275; State v Hales, 256 N.C. 27, 122 S.E. 2d 768. Even so, impossible standards of statutory clarity are not required by the constitution. When the language of a statute provides an adequate warning as to the conduct it condemns and prescribes boundaries sufficiently distinct for

judges and juries to interpret and administer it uniformly, constitutional requirements are fully met. United States v Petrillo, 332 U.S. 1, 91 L.ed 1877, 67 S.Ct. 1538.

Here, James Lambert Howard was found to be delinquent for the willful violation of (1) G.S. 14-132 which provides, *inter alia*, that if any person "shall make any rude or riotous noise or be guilty of any disorderly conduct" in any public building of any county, or shall commit any nuisance in such building, he shall be guilty of a misdemeanor; and (2) G.S. 14-273 which provides in pertinent part that if any person "shall wilfully interrupt or disturb any public or private school . . . or injure any school building, or deface any school furniture . . . or other school property, . . . he shall be guilty of a misdemeanor" and fined not more than $50 or imprisoned not more than thirty days.

Barbara Burrus and the remaining juveniles were found to be delinquent for the willful violation of G.S. 20-174.1 which provides that no person "shall wilfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic." Violation is punishable by fine or imprisonment, or both, in the discretion of the court.

There is nothing vague or indefinite about these statutes. Men—even children—of common intelligence can comprehend what conduct is prohibited without overtaxing the intellect. Judges and juries should be able to interpret and apply them uniformly. In State v Wiggins, 272 N.C. 147, 158 S.E 2d 37, cert. den. 390 U.S. 1028, 20 L. ed 2d 285, 88 S.Ct. 1418, defendants were charged with interrupting and disturbing the Southwestern High School in Bertie County by picketing in front of the school so as to interfere with classes, a violation of G.S. 14-273. There, as here, defendants argued that the statute was void because its prohibitions were uncertain, vague and indefinite. In upholding that statute, the court said: "It is difficult to believe that the defendants are as mystified as to the meaning of these ordinary English words as . . . they profess to be in their brief. Clearly, they have grossly underestimated the powers of comprehension possessed by 'men of common intelligence.'" That observation seems appropriate here.

The Supreme Court of the United States in sustaining a conviction in the court of New Jersey for a violation of an ordinance forbidding the use of sound trucks emitting "loud and raucous" sound, said: "The contention that the section is so vague, obscure and indefinite as to be unenforceable merits only a passing reference. This objection centers around the use of the words 'loud and raucous.' While these are abstract words, they have through daily use acquired a content that conveys to any interested person a sufficiently accurate concept of what is forbidden." Kovacs v Cooper, 336 U.S. 77, 93 L.ed 513, 69 S.Ct. 488, 10 A.L.R. 2d 608 (1949).

There is nothing vague or mysterious about a statute which provides that any child under sixteen years of age who is delinquent or who violates any state law which would subject an adult to punishment is amenable to the supervision of the juvenile court. Simply stated, that is the complete accusation against these children. It is not alleged that they were unruly or wayward or misdirected or disobedient or beyond the control of their parents. Hence, it is unnecessary to wage a war of words regarding the clarity of vagueness, as the case may be, of such terminology. We confine our discussion to the portion of the statute under which these children were disciplined. "Generally, delinquent children . . . are children who committed offenses against the law, or who are found to be falling into bad habits, or to be incorrigible, or who knowingly associate with vicious or immoral persons, or who are growing up in idleness and crime." 31 Am. Jur., Juvenile Courts, etc. § 36. A delinquent child is defined in Black's Law Dictionary 4th Ed. Rev. (1968) as "an infant of not more than specified age . . . who has violated any law. . . ." This seems clear enough. The challenge to these statutes based on vagueness is overruled.

Appellants seek to equate the protective custody of children under the juvenile laws of the State with the trial and punishment of adults under the criminal statutes. By so doing, they conclude that since a juvenile may be committed "during minority" (unless sooner released by the proper authorities) he is required "to serve a longer period of confinement" than the criminal law visits upon

an adult for violation of the same statute. Therefore, they argue, the juvenile statutes are constitutionally unsound. The equation is a *non sequitur;* its rationale fallacious. Nothing in *Gault* or other recent federal decisions support it. There are still many valid distinctions between a criminal trial and a juvenile proceeding. It suffices to say that the laws of this State and their administration by the District Court of Hyde County in these cases comply in full measure with recent constitutional standards for juvenile proceedings laid down by the United States Supreme Court in *Gault.* The record discloses complete fairness on the part of Judge Ward. The alleged misconduct of the children was stated with particularity in the petitions and brought to the attention of the juveniles and their parents in apt time. They were given timely notice of the hearing and afforded adequate opportunity to prepare for it. They were represented by able counsel and faced their accusers with lengthy cross examination. No statements or confessions, coerced or otherwise, were offered against them. They were accorded and exercised the privilege of remaining silent and declining to testify. Thus the basic requirements of due process have been satisfied. The constitutionality of the proceedings is fully sustained by *Kent* and *Gault,* supra, and by our own decisions as well. These juvenile statutes have been construed, applied and upheld in many decisions of this Court including State v Burnett, supra (179 N.C. 735, 102 S.E. 711); State v Coble, 181 N.C. 554, 107 S.E. 132; In Re Hamilton, 182 N.C. 44, 108 S.E. 385; In Re Coston, 187 N.C. 509, 122 S.E. 183; Winner v Brice, 212 N.C. 294, 193 S.E. 400. Furthermore, statutes similar to our own have been held constitutional in over forty states against a variety of attacks. In Re Gault, supra. See Paulsen, Kent v United States: The Constitutional Context of Juvenile Cases, 1966 Supreme Court Review 167, 174. Whatever may be the shortcomings of the juvenile court, and there are many, we are not inclined to hamstring the State in its efforts to deal with errant children as wards of the State instead of criminals. The Constitution does not require such mischievous meddling. We follow the rule that statutes will not be declared un-

constitutional unless they are clearly so. Hobbs v Moore County, 267 N.C. 665, 149 S.E. 2d 1; State v Warren, 252 N.C. 690, 114 S.E. 2d 660. Appellants' challenge to the constitutionality of Article 2, Chapter 110 of the General Statutes is overruled.

4. Did the juvenile court judge err by preventing an appeal in forma pauperis in these proceedings?

An appeal may be taken away from any order or judgment of the juvenile court to the North Carolina Court of Appeals in all cases. When an appeal is thus taken the district judge must summarize the evidence and make findings of fact. All appeals are on the record on questions of law or legal inference. G.S. 7A-195; G.S. 110-40. By way of contrast, it should be noted that appeals from the district court in criminal cases are taken to the superior court for trial *de novo* before a jury. G.S. 7A-196(e). Thus, juvenile court proceedings in the district court are not classified as "criminal cases" appealable to the superior court; and statutes on criminal procedure, dealing with appointment of counsel for indigent defendants and permitting them to appeal in forma pauperis, have no application and offer no solution to the problem before us.

Appeals in forma pauperis in civil actions tried in superior court are governed by G.S. 1-288 which provides, in pertinent part, that "[w]hen any party to a civil action tried and determined in the superior court . . . desires an appeal from the judgment rendered in the action . . . and is unable, by reason of his poverty, to make the deposit or to give the security required by law for said appeal, it shall be the duty of the judge . . . of said superior court to make an order allowing said party to appeal . . . without giving security therefor. The party desiring to appeal . . . shall . . . make affidavit that he is unable by reason of his poverty to give the security required by law, and that he is advised by a practicing attorney that there is error in matter of law in the decision of the superior court in said action. The affidavit must be accompanied by a written statement from a practicing attorney . . . that he has examined the affiant's

case, and is of opinion that the decision of the superi court, in said action, is contrary to law."

G.S. 7A-193 provides: "Except as otherwise provid in this chapter, the civil procedure provided in chapter of the General Statutes applies in the district court di sion of the General Court of Justice. Where there reference in chapter 1 of the General Statutes to t superior court, it shall be deemed to refer also to t district court in respect of causes in the district cou division." It is not "otherwise provided" in Chapter 7 of the General Statutes. It therefore follows that G. 1-288 is applicable to appeals in civil actions and juveni proceedings tried in the district court. Compliance wi its terms was necessary to entitle appellants to an ord allowing them to appeal in forma pauperis. The requir ments are mandatory and must be observed. Anders v Worthington, 238 N.C. 577, 78 S.E. 2d 333; Willian v Tillman, 229 N.C. 434, 50 S.E. 2d 33; Clark v Clar 225 N.C. 687, 36 S.E. 2d 261; Franklin v Gentry, 2 N.C. 41, 21 S.E. 2d 828; McIntire v McIntire, 203 N. 631, 166 S.E. 732. Since the required affidavit a certificate of counsel were not filed in compliance wi the statute, the Court of Appeals concluded that the di trict court judge committed no error in declining to iss an order providing for an appeal in forma pauperis. W concur and note parenthetically that no prejudice has r sulted to the juveniles involved. Their appeals have bee prepared, docketed and heard by both courts in the A pellate Division of the General Court of Justice. The have been diligently represented by able counsel. Whi this may not conclusively rebut the suggestion of ind gency, it conclusively shows that lack of an order provi ing for appeals in forma pauperis was harmless.

When there is error on the face of the record an a peal presents the matter for review, and the judgmen may be modified to conform to legal requirements. Jame v Pretlow, 242 N.C. 102, 86 S.E. 2d 759; Smith v Smit 223 N.C. 433, 27 S.E. 2d 137; Sheets v Walsh, 215 N.C 711, 2 S.E. 2d 861.

We note *ex mero motu* that the "Order of Commitmen and Probation" signed by the able and patient judge i

each of these cases exceeds the disposition authorized by G.S. 110-29. That statute provides that the court, if satisfied that the child is in need of the care, protection, or discipline of the State, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guidance. Thereupon the court may: (1) place the child on probation subject to named conditions; *or* (2) commit the child to the custody of a relative, etc.; *or* (3) commit the child to the custody of the County Department of Public Welfare to be placed by said department in an institution maintained by the State; *or* (4) commit the child directly to an appropriate State or private institution or family home; *or* (5) render such further judgment or make such further order of commitment as may be authorized by law. These authorized dispositions are stated in the alternative. The judge may use any one of them but is not empowered to use two or more at the same time. When he placed each child on probation subject to the conditions named in the order, he exhausted his immediate authority. Therefore, that portion of the order in each case which adjudged that the juvenile be "committed to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents (as said institutions are enumerated in G.S. 134-91), after having first received notice from the superintendent of said institution that such person can be received, and held by said institution for no definite term but until such time as The Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State" is unauthorized and must be deleted. Each judgment is accordingly modified by deleting the quoted portion together with the words "this commitment is suspended and said child," which are now redundant.

When a child is placed on probation, as here, the judge determines the duration and conditions thereof, and may modify same at any time. Probation may be revoked at any time the court finds the conditions of probation have been breached. The court may then commit the juvenile or make such other disposition as it might have made at

the time the child was placed on probation. G.S. 110-32.

The result reached by the Court of Appeals in all other respects is affirmed. Let the cases be remanded to the Court of Appeals for certification to the District Court of Hyde County for compliance with this opinion.

MODIFIED and AFFIRMED.

/s/ [Illegible]

A TRUE COPY

/s/ Adrian J. Newton
Clerk of the Supreme Court of North Carolina.

IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

IN RE: BARBARA BURRUS, SARA WHITNEY, DARLENE MCCOY ET AL

No. 15, Fall Term, 1969

Appeal Docketed	13 June 1969
Case Argued	10 September 1969
Opinion Filed	16 October 1969
Final Judgment Entered	16 October 1969

* * * *

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and the proceedings in the above entitled case, as the same now appear from the originals on file in my office.

I further certify that the rules of this court prohibit the filing of petitions to rehear in criminal cases.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this the 3rd day of December, 1969.

/s/ Adrian J. Newton
Clerk of the Supreme Court of North Carolina.

SUPREME COURT OF THE UNITED STATES

No. 1544 Misc., October Term, 1969

IN RE BURRUS, ET AL., PETITIONERS

On petition for writ of Certiorari to the Supreme Court of the State of North Carolina.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1441 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceeding below which accompanied the petition shall be treated as though filed in response to such writ.

April 20, 1970

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FILED
JUL 20 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

PETITION NOT PRINTED
RESPONSE NOT PRINTED

No. 128

IN RE BARBARA BURRUS, et al.,

Petitioners,

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR PETITIONERS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 128

IN RE BARBARA BURRUS, et al.,

Petitioner,

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR PETITIONERS

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of North Carolina is reported at 169 S.E. 2d 879 and appears in the Appendix at pp. 324-44.

The opinions of the North Carolina Court of Appeals in *In Re Burrus* and *In Re Shelton* are reported at 4 N.C. App. 523, 167 S.E. 2d 254; 5 N.C. App. 487, 168 S.E. 2d 695 (1969) and are set forth in the Appendix at pp. 303-15; 318-20.

JURISDICTION

The judgment of the Supreme Court of North Carolina was entered on October 16, 1969. (A. 345) The petition for writ of certiorari was filed January 12, 1970 and granted April 20, 1970. (A. 346)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth and Fourteenth Amendments to the Constitution of the United States.

This case also involves North Carolina constitutional and statutory provisions, reprinted in an appendix to this brief, *infra* pp. 1a, *et seq.*

QUESTION PRESENTED

Were petitioners' rights under the Sixth and Fourteenth Amendments violated when they were denied trial by jury, on the issue whether they had violated state criminal laws, in juvenile court proceedings which could have resulted in their incarceration for periods of from six to ten years, respectively?

STATEMENT

Juvenile petitioners, ranging in age from 11 to 15 years, their parents and guardians, were summoned to hearings on various dates in January, 1969, before the District Court of Hyde County, North Carolina, upon petitions charging the juveniles with various unlawful acts committed in the county. The charges arose out of a series of demonstrations staged in Hyde County during the months of September through December, 1968, by black adults and children who believed that assignments of students and a plan con-

solidating several of the county public schools discriminated against black school children.[1] (A. 171-72, 195).

The petitions, filed by North Carolina state highway patrolmen, requested that the court hear and determine each case and, if necessary, give the named juvenile "such oversight and control as will promote the welfare of such child and the best interest of the State." (E.g., A. 2-3). With one exception, each petition, as amended prior to trial on motion of the state solicitor, charged that the named juvenile did "willfully, intentionally, and unlawfully" stand upon the highway or street in such a manner as to "impede the regular flow and normal traffic, of motor vehicles and their operators" N.C. Gen. Stat. § 20-174.1[2] (E.g., A.2; 98). In the case of one juvenile, James Lambert Howard, the petition charged that he "knowingly, willfully and unlawfully" made riotous noises and became disorderly in the O. A. Peay School in Swan Quarter, North Carolina, in violation of N.C. Gen. Stat. § 14-132,[3] and also interrupted and disturbed the O. A. Peay School and defaced school furniture while the school was in regular session in violation of N.C. Gen. Stat. § 14-273[4] (A. 137-38).

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[1]The events which led to petitioners' arrests are described in the report of investigators from the National Educational Association who conducted an extensive inquiry in 1969 at the request of the North Carolina Teachers Association. *Hyde County, N.E.A., North Carolina: School Boycott and the Roots of Conflict* (N.E.A.; 1969)

[2]A violation of N.C. Gen. Stat. § 20.174.1 constitutes a misdemeanor and is punishable by fine, by imprisonment for a term not exceeding two years, or by both. *State v. Spencer*, 173 S.E.2d 765, 774-75, 276 N.C. 535 (1970).

[3]A violation of N.C. Gen. Stat. § 14-132 constitutes a misdemeanor, punishable under N.C. Gen. Stat. § 14-3(a) by fine, by imprisonment for a term not exceeding two years, or by both.

[4]A violation of N.C. Gen. Stat. § 14-273 constitutes a misdemeanor, punishable under N.C. Gen. Stat. § 14-3(a) by fine, by imprisonment for a term not exceeding two years, or by both.

Parents and persons having custody over each juvenile received a summons ordering them to show cause why the children "should not be dealt with according to the provisions of the North Carolina Juvenile Law" (E.g., A. 54). Cases arising out of demonstrations which had occurred at the same time and place were consolidated for hearing, findings, by the court, and disposition, (E.g. A. 143). A total of forty-four cases were heard in nine separate hearings on January 9 and 10, 1969 (A. 143-273). Two cases were heard separately on January 21, 1969 (A. 285-96). In some instances more than one petition was filed charging the same juvenile with obstruction of traffic on different dates.

Prior to each hearing the trial judge stated in open court that he was about to conduct juvenile hearings, not criminal trials, and that in no event would any child be found to have committed a crime, but that the court would "proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the Court should give such child under the circumstances disclosed in the case" (E.g. A. 144-45). The district judge ordered the general public excluded from the hearing room, over the objection of counsel for the juveniles,[5] pursuant to N.C. Gen. Stat. § 110-24, which provides that "in the hearing of any case coming within the provisions of [the Juvenile Court Act] the general public may be excluded and only such persons admitted thereto as have a direct interest in the case." Parents or guardians of the juveniles and witnesses were allowed to remain (E.g., A. 143).

Prior to each hearing, counsel for the juveniles requested a trial by jury; in each instance this request was denied (E.g., A. 144). Counsel for the juveniles also moved to dis-

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[5]At the hearings in the cases of Selma Shelton and John Green Cunningham on January 12, 1969, counsel did not object to the exclusion of the general public (A. 285-86; 292).

miss each petition on the ground that provisions of the Juvenile Court Act then in force, N.C. Gen. Stat. §§ 110-21 *et seq.*, were unconstitutionally vague and overbroad, depriving the juveniles of equal protection and due process of the law (E.g., A. 144). The motions were denied in each instance and the court proceeded to hear the evidence. (Ibid). In each case, with the exception of James Lambert Howard's, the state's evidence consisted of the testimony of a highway patrolman. The juveniles did not testify in their own behalf, nor did they present any witnesses, but each patrolman was cross-examined by petitioners' counsel. (E.g., A. 145-50).

The testimony of the highway patrolmen was in essence that on various occasions in November and December, 1968, they observed the juveniles walking along North Carolina Highway 264 in Swan Quarter, North Carolina, in the vicinity of the county courthouse (A. 145, 168, 191, 212) or near a Methodist Church. On these occasions, the groups sang "freedom" songs, shouted and clapped their hands, carried signs, played catch with a basketball, or carried chickens. (A. 146, 168, 192, 212, 262, 264). As a result there was some interference with vehicular traffic (Ibid). Those demonstrators who failed to leave the paved portion of the highway after receiving a warning that they were committing a crime were placed under arrest for violation of the criminal law (E.g., A. 147-149, 216).[6] Juveniles who incorrectly stated that they were more than sixteen years

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[6]In the case of James Lambert Howard, a patrolman testified that he saw Howard in the principal's office at the O. A. Peay School on December 5, 1968, moving furniture with fifteen other persons (A. 251). Although he did not know of any other act which Howard committed nor of any specific statement which Howard made while in the office (A. 253), the office was in disarray (A. 252). The principal of the O. A. Peay School testified that James Howard was not a student at the school and had not been authorized to enter his office (A. 250).

old at the time of their arrest were held on bail. When they were later ascertained to be under sixteen years of age, juvenile petitions were filed. (A. 149, 193, 216-17, 258).

Subsequent to vigorous cross-examination of this testimony, petitioners' counsel renewed the motion to dismiss the cases against the juveniles (E.g., A. 149). In each instance the motion was denied (E.g., A. 150). The trial court then found as a fact in each case that the juvenile had committed "an act for which an adult may be punished by law" (E.g. A. 150) and that each was "in need of the care, protection and discipline of the state, and is in need of more suitable guardianship" (A. 150-51). The court entered an order in each case committing the juvenile "to the custody of the Hyde County Department of Public Welfare to be placed by said department in a suitable institution maintained by the State for the care of delinquents . . . and held by said institution for no definite term but until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State."[7] (E.g., A. 151). The court, however, suspended the commitment of each juvenile and placed them each on probation for terms of either twelve or twenty-four months on condition (E.g., A. 151):

(1) that the juvenile violate none of the laws of North Carolina;

(2) that he or she report to the Hyde County Department of Welfare at least once each month;

(3) that he be home by 11:00 o'clock each evening;

(4) that he attend an institution offering training approved by the Hyde County Director of Public Welfare.

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[7]At the time the order was entered final discharge from such an institution was required to be granted any person upon reaching his twenty-first birthday, N.C. Gen. Stat. § 134-108.

On appeal to the North Carolina Court of Appeals, the juveniles consolidated the forty-four cases heard on January 9, and 10, 1969, into one record. (A. 303). After characterizing the conduct of the youths as

> . . . a concerted demonstration by Negroes of Hyde County to assert their defiance of law and order to disrupt the normal economic and social life of Hyde County by a wilful, intentional and flagrant disregard and violation of laws duly enacted by the governing bodies of the state for the public welfare and orderly conduct of human affairs for all citizens of the state (A. 307).

the Court of Appeals unanimously held that neither the United States Constitution nor the Constitution of North Carolina requires a jury trial in juvenile court proceedings. *In Re Burrus*, 4 N.C. App. 523, 167 S.E. 2d 454 (1969). The court also held that the North Carolina Juvenile Court Act was not unconstitutional because of vagueness; that petitioners had no constitutional right to a public trial; and that they had not been denied the right to appeal in forma pauperis (A. 307-15).

The two cases heard separately on January 21, 1969, were also consolidated on appeal. The Court of Appeals noted that the constitutional questions presented were raised in identical language in *In Re Burrus, supra*, and held, for the reasons enunciated in *Burrus*, that the Juvenile Court Act was not unconstitutional and that the constitutional rights of the juveniles were not violated because they were not afforded jury trials. *In Re Shelton*, 5 N.C. App. 487, 168 S.E. 2d 695 (1969).

In Re Burrus and *In Re Shelton, supra*, were consolidated on appeal to the Supreme Court of North Carolina, and that Court also rejected petitioners' claim that they were entitled to a jury trial by the Sixth and Fourteenth Amendments. After citing *Kent v. United States, infra, In Re Gault, infra, Duncan v. Louisiana, infra*, and *In Re Whittington*, 391 U.S. 341 (1968) the Court stated:

> These cases enumerate the basic requirements of due process that must be satisfied in juvenile proceedings; however, the right to jury trial is not listed among them. We have not found and counsel has not cited any case supporting the right to jury trials in juvenile proceedings. We therefore adhere to our former decisions and hold that a juvenile is not entitled to a jury trial in a juvenile court proceeding on the issue of his delinquency. (*In Re Burrus*, 169 S.E. 2d 879, 886 (1969).) (A. 334).[8]

Two judges dissented without opinion.

The Supreme Court also modified the order of commitment that the district judge entered in each case prior to placing the child on probation holding that the dispositions authorized by N.C. Gen. Stat. § 110-29 are alternative, and that two or more may not be employed in the same judgment. Thus, the court deleted that portion of the order of the district court which adjudged that (1) the juveniles be committed and (2) the commitment be suspended. The Court made clear, however, that the district judge may modify the "duration and conditions" of petitioners' probation "at any time," and may revoke probation "at any time the court finds the conditions of probation have been breached. The court may then commit the juvenile or make such other disposition as it might have made at the time the child was placed on probation." (A. 343-44)[9]

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[8]The Supreme Court also rejected claims that juvenile is entitled to a public trial, that the statute petitioners were found to have violated was vague and that petitioners were denied an appeal in forma pauperis.

[9]As the Supreme Court noted, its modification of the district court's order was subject to the Juvenile Court Act provision that "if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time the child was placed on probation." N.C. Gen. Stat. § 110-32.

SUMMARY OF ARGUMENT

In Re Gault, 387 U.S. 1 (1967) established that juveniles charged with delinquency must be tried in conformity with due process. *Duncan v. Louisiana*, 391 U.S. 145 (1969), *Bloom v. Illinois*, 391 U.S. 194 (1968) and *Baldwin v. New York*, 38 U.S.L. Week 4554 (June 20, 1970) established the right to a jury as an element of due process in a trial which might result in a serious infringement of personal liberty. Together these cases compel the conclusion that juveniles subject to incarceration for from six to ten years have a right to jury trial guaranteed by the Fourteenth Amendment, despite the fact that trial takes place in a juvenile court.

The benefits supposedly conferred by a juvenile court system do not support denial of the right to jury trial. The primary benefits to youth that are claimed by juvenile court proponents relate to discretionary intake procedures (which permit disposition short of adjudication) and flexible sentencing (which permits emphasis on rehabilitation). Assuming the dubious proposition that the men, money and understanding necessary to realize these benefits are generally available, their realization does not depend upon or justify dispensing with a jury as the means for trying contested factual questions after it has been determined that formal adjudication is required to establish the susceptibility of a juvenile to any coercive disposition by the court.

What is done with an individual after it is adjudged that he is a delinquent is a very different matter than the process of adjudging him a delinquent. Informality and flexibility may be preserved at the dispositional stage without inviting the dangers and risks which they present at the adjudicatory, fact-finding stage. As recognized by North Carolina law, the purpose of the adjudicatory stage is to determine whether the juvenile has violated a criminal statute, not what rehabilitation is appropriate. This purpose is indistinguishable from that of a criminal trial, and provides no basis for relaxing the safeguards constitutionally neces-

sary at such a trial. Nor can considerations of privacy justify denial of a jury to those juveniles who wish one, for the judge retains ample discretion to regulate reporting and public observation of juvenile court proceedings.

A jury trial can play an important role to protect youth against the commonly observed abuses of the enormous discretion granted those administering juvenile courts—a discretion which often has been employed to the detriment of racially and economically disadvantaged groups. It can guard the juvenile against the political or the case-worn judge, against consideration of inadmissable evidence, and against judicial credulity of the testimony of witnesses such as police officers or juvenile officers who may have close working relationships with the courts.

This Court has never refused to require procedural protections against arbitrariness because they might prove costly; but, in any event, the available evidence suggests overwhelmingly that such practical problems as may arise from providing jury trials in juvenile courts are manageable. A substantial number of jurisdictions now make jury trials available without ill effect. As in the criminal courts, only a relatively small number of cases will actually be disposed of by jury trial. All the states, moreover, are familiar with the administration of jury trials in even minor cases.

The record of juvenile court administration simply fails to justify any abridgement of the procedural guarantees which are recognized as necessary where a significant infringement of liberty is threatened. Research and experience have confirmed the premise, on which this Court's *Gault* decision is based, that juvenile courts have not fulfilled the promises which were early supposed to excuse abbreviated procedures. No colorable reason exists, therefore, why a procedural protection traditionally accorded in criminal proceedings should be denied to young persons subject to involuntary incarceration for lengthy periods.

ARGUMENT

THE RIGHTS OF BLACK JUVENILES UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WERE VIOLATED WHEN THEY WERE DENIED TRIAL BY JURY ON THE ISSUE OF THEIR DELINQUENCY IN JUVENILE COURT PROCEEDINGS WHICH COULD HAVE RESULTED IN THEIR INCARCERATION FOR PERIODS OF FROM SIX TO TEN YEARS.

When petitioners were adjudicated delinquents upon a finding that they had violated state criminal laws,[10] they were thereby rendered liable to incarceration in a state institution for periods of from six to ten years. Had they been adults, subjected to charges carrying such penalties, plainly the Constitution of the United States–as well as North Carolina law[11]–would have given them an absolute right to trial by jury. For in *Duncan v. Louisiana*, 391 U.S. 145 (1968), this Court held applicable to the states the Sixth Amendment's requirement of trial by jury in all seri-

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[10]This case does not raise the question of the right to jury trial in juvenile proceedings which do not involve a charge of violation of state criminal laws. Persons alleged to be "in need of supervision," see *In Re Winship*, 25 L.Ed 2d 368, 373, n. 1 (1970), truants, neglected children and "incorrigibles" may not be charged with criminal offenses. The issues raised by such allegations may not involve the resolution of contested questions of fact. Cf. *In re Lambert*, 203 F.2d 607 (D.C. Cir. 1953); *Matter of Elmore*, 222 A.2d 555 (D.C. Ct. App. 1966).

[11]An adult charged with any one of the several offenses which constituted the delinquency of these juveniles would have been entitled to a trial by jury under state law. With one exception petitioners were charged with "impeding the regular flow of "traffic" in violation of N.C. Gen. Stat. § 20-174.1, an offense punishable by a fine up to two years imprisonment. One juvenile, James Lambert Howard, was charged with violations of two statutes (N.C. Gen. Stat. §§ 14-132; 273), the maximum periods of incarceration for which were not to exceed two years, respectively, see N.C. Gen. Stat. § 14-3(a).

Article I, § 13 of the North Carolina Constitution provides:

> "No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open

ous criminal prosecutions, as distinguished from petty offenses. The Court held that "the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee." (391 U.S. at 149).

The determination whether a crime is a serious offense for Sixth Amendment purposes is made primarily by examination of the sentence authorized by law (not the penalty actually imposed) for the offense. Some offenses, assuredly, may require jury trial because of their moral gravity regardless of penalty, *e.g., District of Columbia v. Colts,* 282 U.S. 63 (1930); but it is also settled that "the penalty authorized for a particular crime is of major relevance in determining whether it is serious or not and may in itself, if severe enough, subject the trial to the mandates of the Sixth Amendment. *District of Columbia v. Clawans,* 300 U.S. 617 (1937)." *Duncan v. Louisiana, supra,* 391 U.S., at 159-160. This is so not merely because penalty may serve " 'as a guage of . . . social and ethical judgments,' " id., at 160, but also because the placing of the jury trial line involves a weighing of "the possible consequences to defendants from convictions" against the "benefits to efficient law enforcement and simplified judicial ad-

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court. The Legislature may, however, provide other means of trial, for petty misdemeanors, with the right of appeal."

The North Carolina Legislature has not exercised its power to provide other means of trial for misdemeanors—defined generally as crimes for which the punishment is not more than two years incarceration. N.C. Gen. Stat. § 14-3; *State v. Burris*, 3 N.C. App. 35, 164 S.E. 2d 52 (1968). On the contrary, the Legislature has provided (N.C. Gen. Stat. §§ 7A-196; 15-157, 177.1) that in even the most minor offenses either the complainant or the accused may demand a trial *de novo* by a jury.

ministration" of nonjury trials, *ibid.*[12] As the Court held in *Baldwin v. New York, supra* at n. 6 "a potential sentence in excess of six-months imprisonment is sufficiently severe by itself to take the offense out of the category of 'petty' ".

Applying this standard in *Duncan*, the Court held that Louisiana could not without a jury trial convict a man for simple battery when the offense carried a possible prison sentence of two years.[13] In *Baldwin, supra,* it was held that a potential penalty in excess of six months requires a right to jury trial. In *Bloom v. Illinois*, 391 U.S. 194 (1968), the Court ruled that criminal contempts entailing severe penalties were similarly not punishable without trial by jury. Applying the rule of *Cheff v. Schnackenberg*, 384 U.S. 373 (1966), which requires consideration of the penalty actually imposed under contempt statutes punishing a wide range of offenses without any specified maximum term, the Court found that the penalty imposed on Bloom—

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[12]The point is made most forcefully in the contempt cases, *Cheff v. Schnackenberg*, 384 U.S. 373 (1966), and *Bloom v. Illinois*, 391 U.S. 194 (1968), that severe penalties (whether authorized or actually imposed) are not mere gauges of moral seriousness, but independent determiners of a sort of seriousness which requires jury trial. This is so because, under *Cheff* and *Bloom*, identical contemptuous acts—having, obviously, identical moral gravity—are subject to jury or nonjury trial depending on penalty alone.

[13]Under North Carolina law a defendant charged with a misdemeanor must first submit to trial without a jury in the district court before obtaining a trial *de novo* in superior court before a jury. N.C. Gen. Stat. § 7A-196; *State v. Sherron*, 4 N.C. App. 386, 166 S.E. 2d 836 (1969); compare *Callan v. Wilson*, 127 U.S. 540 (1888). But whether North Carolina must accord the identical form of jury trial presently required by the Sixth Amendment in a criminal court is not an issue presented by petitioners in this case. Their submission is that they are entitled to adjudication by a lay jury rather than a judge. They make no contention as to the required number of jurors, cf. *Williams v. Florida*, 38 U.S.L. Week 4557 (June 20, 1970), or manner or form of decision by such jurors in a juvenile court proceeding, *In Re Gault*, 387 U.S. 1, 30 (1967); *In re Winship*, 12 L. Ed. 2d 368 (1970).

twenty-four months imprisonment—entitled him to a jury trial.[14]

But despite the fact that petitioners were subject to periods of institutionalization three to six times as long as those authorized in *Duncan* or imposed in *Bloom*, and as much as ten times authorized in *Baldwin*,[15] the Supreme Court of North Carolina held that trial by jury was unavail-

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[14]*Duncan*, *Baldwin* and *Bloom* thus compel the conclusion that were these petitioners adults they would have been entitled to trial by jury, for they were subject to imprisonment in a state institution for periods of from 6 to 10 years—the periods until each reached the age of 21, N.C. Gen. Stat. §§ 110-29-(4), 110-21. (A revision of North Carolina law effective Jan. 1, 1970, found in Art. 23 of § 7A, N.C. Gen. Stat., restricts incarceration in a state institution to the age of 18, unless the juvenile is participating in a vocational program in which case he can be held in custody until completion of the program, N.C. Gen. Stat. § 7A-286 (4) (c). Retroactive application is not, however, specifically provided by the new statute, and juveniles remain subject to juvenile court probation until age 21, N.C. Gen. Stat. §§ 7A-286; 110-22.)

Petitioners were placed on probation until the age of 21 and that probation "may be revoked at any time and the [juvenile] court may make such other disposition of the child as it might have made at the time the child was placed on probation." N.C. Gen. Stat. §§ 110-32, 22. Under these circumstances, surely, nothing in *Frank v. United States*, 395 U.S. 147 (1969) would justify denial of a jury trial to petitioners. The nonjury trial authorized in *Frank* (for a contemnor placed on three years probation) was expressly limited to a situation where (1) a statute contains no maximum sentence and (2) if the defendant's probation were revoked, the maximum sentence that could be imposed (without a jury trial) was limited to six months imprisonment. The Court stated explicitly: "If the statute creating the offense specifies a maximum penalty, then of course that penalty is the relevant period. See *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216 (1968)." *Frank, id.*, at 149 n. 2.

[15]We recognize, of course, that making the right to jury trial turn on the potential nature of the penalty suggests possible anomalous results where the penalty authorized depends on age. The anomaly is more apparent than real, for in every jurisdiction of which we are aware the penalty authorized for a juvenile is at least two years incarceration and would thus always give rise to a right to jury trial.

able to them because their adjudication as delinquents took place in a court "where the investigation is into the status and needs of the child, and the institution to which the child is committed is not a penal character" (sic) (A. 334). Petitioners submit that such a result is untenable in light of (1) this Court's decisions in *Duncan, supra,* and *Baldwin, supra,* that a jury trial "is fundamental in the context of the criminal processes maintained by the American states" (391 U.S. at 149, n. 14); (2) this Court's decision in *Bloom, supra,* that contempts, traditionally punishable without the ordinary safeguards of a criminal trial, "are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same" (*supra* at 201); and (3) this Court's decision in *In Re Gault,* 387 U.S. 1 (1967), and *In Re Winship,* 25 L.ed. 2d 368 (1970), that the essentials of due process apply to juvenile court proceedings.

At the outset it deserves note that, with the exception of the right to public trial, North Carolina law creates an adjudicatory phase of juvenile proceedings materially indistinguishable from that of the ordinary criminal case. N.C. Gen. Stat. §§ 110-29; 7A-285. The charges against petitioners were that they violated state penal laws. The district court which heard petitioners' cases as a juvenile court has exclusive original jurisdiction over adult criminal offenses below the grade of felony, N.C. Gen. Stat. § 7A-272; and, although cases involving juveniles are heard in a separate part of the court, they are tried before a judge who regularly hears criminal cases. N.C. Gen. Stat. §§ 110-23, 24. North Carolina law sharply distinguishes between the adjudicatory phase of the juvenile hearing where "the judge shall find the facts and shall protect the rights of the child and his parents in order to assure due process of law" and the "disposition part of the hearing" which "may be informal", N.C. Gen. Stat. § 7A-285. The juveniles in this case were given notice of the charges, represented by counsel, cross-examined their accusers, and were accorded and exercised the privilege of declining to testify (A. 340). In denying the right to jury trial, the Supreme Court of North

Carolina stated that there "are still many valid distinctions between a criminal trial and a juvenile proceeding" (A. 340); but it failed to enumerate any which pertain to the adjudicatory phase, other than the modified right to a public trial.

Petitioners' submit that where a state employs a fact-finding regime almost identical to that found in criminal prosecutions, and equates the substantive offense charged with one of its criminal laws, then in every respect except label, the system of adjudication created is the "kind of system where the right to jury trial is fundamental." *Duncan, Id.* at 149 n. 14. That, simply, is this case.

In *Kent v. United States*, 383 U.S. 541, 557 (1966), the Court made it clear that the laudable intentions of juvenile court proponents could not do service for fair procedures in children's cases.[16] The first expansive discussion of the constitutional requirements of due process in juvenile proceedings was undertaken in *In Re Gault*, 387 U.S. 1 (1967). The Court there rejected the view that due process was a concept alien to the juvenile courts, and held that a juvenile is entitled to adequate and timely notice of the charges against him, right to counsel, right to confront and cross-examine witnesses, and the privilege against self-incrimination.

Only last term the Court held that the Due Process Clause of the Fourteenth Amendment requires both that the conviction of a criminally accused be based upon proof of guilt beyond a reasonable doubt, and that the same standard be applied to the adjudicatory stage of a juvenile delin-

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[16]There the Court held that a valid waiver of the jurisdiction of the Juvenile Court of the District of Columbia required a hearing, including access by counsel to social records, probation reports and a statement of reasons for the Juvenile Court's decision. Although *Kent* turned on statutory language, the opinion of the Court emphasized that "the basic requirements of due process and fairness must be satisfied in juvenile proceedings," *Id.* at 553.

quency proceeding in which a youth is charged with an act that would constitute a crime if committed by an adult, *In re Winship*, 25 L.ed 2d 368 (1970). The Court reasoned that "the same considerations which demand extreme caution in fact finding to protect the innocent adult apply as well to the innocent child", *Id.* at 376, and refused to distinguish between juvenile and criminal court proceedings on the ground that in New York a delinquency adjudication is not a conviction; or that it affects no right or privilege, including the right to hold office or to obtain a license; or that a cloak of confidentiality is thrown around the proceedings; or that the status of delinquency is not similar to adjudication as a criminal; or that the purpose of delinquency proceedings is not to punish but to save the child. The Court reaffirmed conclusions reached in *Gault, supra*, that neither labelling a proceeding as civil nor the goal of segregating juvenile offenders from adult prisoners obviates the need for due process safeguards in juvenile court where the issue is whether the child will be found delinquent and subjected to potentially serious loss of liberty.

In Winship the Court also rejected the argument that requiring proof beyond a reasonable doubt prior to adjudication of delinquency would destroy beneficial aspects of the juvenile court process. Its opinion emphasized that use of the reasonable doubt standard does not trench upon the child's civil rights, destroy the confidentiality of juvenile court records or proceedings, impair opportunities during post-adjudicatory or dispositional stages for a wide ranging review of the child's history with a view toward his individualized treatment, or alter beneficial procedures distinctive to juvenile proceedings which are employed prior to the adjudicatory hearing, *Id.* at 376, 377. Similarly here, it is petitioners' contention not only that a right to jury trial in a case where a juvenile is charged with committing criminal acts and subject to lengthy imprisonment constitutes a necessary safeguard upon juvenile court fact-finding processes, but, additionally, that allowance of a jury trial, if one is de-

sired, impairs none of those claimed benefits to youth which justify separate treatment in a juvenile court. The relationship is obvious, we think, between the requirement of proof beyond a reasonable doubt and the jury as the trier of fact that traditionally applies that standard "in the context of the criminal processes maintained by the American states," *Duncan v. Louisiana, supra*, 391 U.S. at 149 n. 14. So, by the logic of *Winship*, jury trial is constitutionally required no less in juvenile than in substantially identical adult criminal proceedings.

To be sure, a jury trial tends in a number of ways to contribute to an atmosphere of formality. But where fact-finding is concerned we simply do not understand how formality can be considered a vice. The rules of evidence which would be applied in any proceeding involving a jury represent our law's way of ensuring the most advantageous circumstances for dispassionate and objective determination of factual issues. It is simply unreal in a society where the communications media are full of reports of judicial proceedings and where even the very young have access to a wealth of information concerning the character of judicial proceedings, to deny a youth a procedural protection recognized as fundamental in such proceedings because it smacks of courtroom formality. As Professor Paulsen has put it: "The child and his parents are under no illusion. They know they are in court, not in school or at the doctor's office." Paulsen, *Kent v. United States, The Constitutional Context of Juvenile Cases*, 1966 Supt. Ct. Rev. 167, 186. Dorsen and Rezneck have appropriately put the formality argument to rest:

> Trial by jury is not a matter of form—like a judge's robe or gavel—but of substance, the product of long historical experience and expressing a profound judgment by our legal system about the means of adjudicating criminal behavior. If it thereby introduces an aura of formality or solemnity, it is formality desirable in a matter of such consequence. Further, we submit that such formality is more

> likely to infuse a juvenile with respect for the legal system than to heighten his feelings of alienation and in that sense may ultimately be therapeutic. (*In Re Gault, and The Future of Juvenile Law*, 1 Family Law Quarterly, No. 4, at 23 (1967)).

Indeed, the "formality" of trial by jury guarantees that evidentiary problems which will arise increasingly in juvenile cases can be solved without prejudice to a fair trial. So long as juvenile courts exercised wide latitude to ignore the ordinary evidentiary rules of criminal trials, including constitutional exclusionary rules, exposure of the trier of fact to inadmissible evidence in the course of deciding whether to admit it did not raise the problems that it does in adult trials.[17] But juvenile courts no longer have that same latitude as a result of *Gault*. Absent "a valid confession," a delinquency finding can rest only on evidence given under oath by witnesses subject to confrontation and cross-examination. (387 U.S. at 56). As a result, juvenile court judges will have to hear and rule upon questions of admissibility of evidence more frequently than in past.[18] If the judge hears the evidence in the course of deciding whether to admit it, he may naturally be influenced by it in his determination of the facts, even if he excludes it. Recognition of this likelihood, of course, is a major factor in the election of jury trial in many cases of adults charged with crime. The problem is heightened in cases where the judge has special information which may bias him against the child—

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[17]The Court recognized the critical importance of insulating the trier of fact from inadmissible evidence, particularly if it is a confession, in *Jackson v. Denno*, 378 U.S. 368, 388 (1964). A juvenile should have an independent trier of fact, a jury if he so desires, to guarantee observance of this principle.

[18]See e.g. *In Re Juvenile Delinquents*, 60 Misc. 2d 355, 303 N.Y.S. 2d 406 (N.Y. Fam. Ct. 1969) (Juveniles have right to examine their own statements, their property, and witnesses' statements before trial, to a suppression hearing, and to a preliminary hearing on probable cause.)

information which would not be available to a jury. Consider, for example, cases of juveniles with prior arrests or convictions, or cases where the juvenile has withdrawn a plea of guilty and now seeks a trial. Moreover, in juvenile court there is still a problem with the judge examining a complete social file on the child before even hearing any evidence in the case. See Glen, *Bifurcated Hearings in Juvenile Court*, 16 Crime and Delinquency 255, 259-60 (1970). The availability of jury trial in juvenile cases would provide juveniles the assurance that inadmissible evidence will not influence the determination whether they committed the acts charged.

Trial by jury would also assure—consistently with the Sixth Amendment right of confrontation—that the credibility of witnesses will be evaluated freshly in each case without regard to how often they may have appeared before the court in the past or how well known they may be to the judge. This is a particularly important consideration in juvenile cases where juvenile officers, and even the court's own probation officers who work under the direction of the judge, often appear as witnesses to support the case against the juvenile. Indeed, a jury trial is particularly appropriate in North Carolina where, as in many other jurisdictions, complaints may be screened by a probation officer, and adjusted prior to, or in place of, hearing. Such prescreening procedures may be very valuable to the juvenile, but when a trial judge, or a probation officer accountable to the judge, is involved (See N.C. Gen. Stat. §§ 7A-281, 134; 110-21, 23; cf. § 110-31.) in both investigatory and adjudicatory phases the danger of prejudgment is drastically increased, cf. *In Re Murchison*, 349 U.S. 133 (1955); *In Re Corey*, 72 Cal. Rptr. 115 (C.A. 1st Div. 1968), and the jury's role as a neutral fact-finder all the more essential.

Another argument sometimes raised against the requirement of jury trials is that the privacy and confidentiality of a juvenile court proceedings will be impaired. Of course, a

good deal of the theoretical confidentiality of juvenile court proceedings is illusory. After a detailed discussion, the Court in *Gault*, characterized "the claim of secrecy" as "more rhetoric than reality" (supra, at 24, 25).

At any rate, nothing in a jury trial would impair the confidentiality of juvenile court dispositional records to the extent they are now protected. To the extent a private hearing is of benefit to the juvenile, jury trial would seldom involve any significant incursion on that interest. As the court below put it: "It has never been the practice in such proceedings, here or elsewhere wholly to exclude parents, relatives or friends . . ." (A. 335). To be sure, a jury consists of the representatives of the public,[19] but its pres-

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[19]There is no impediment to a jury trial in juvenile court by reason of petitioners' right to a jury of their peers. This Court has long held that a jury of peers means a jury selected from a source truly representative of the community at large and not the organ of any special group or class, *Glasser v. United States*, 315 U.S. 60, 85-86 (1941). Any attempt to ridicule the concept of trial by jury by implying that, say, 15-year olds would be entitled to a jury of 15-year olds is consequently misplaced.

Although states are not free to set age restrictions without respect to whether the resulting jury system reflects the conscience of the community, the states have a right, indeed an obligation under the Sixth and Fourteenth Amendments, to ensure that jurors are capable of understanding court proceedings and acting competently, *Carter v. Jury Commission of Green County*, 396 U.S. 320, 332-33 (1970). Accordingly, states may set age requirements for jury service and if such requirements are reasonable classifications and do not destroy the function of the jury as the conscience of the community, no one can validly claim that his particular age group must be represented in the source from which the jury is selected. Presumably, young adults will be able to bring to bear such understanding of the problems of minors as is necessary to make sure that the jury is a representative body just as middle-aged persons judge disputes involving the elderly, even where state law discourages jury service by persons over a certain age. Cf. Ala. Code, Tit. 30, § 21. Only if limiting jury service to those over 21 were shown to destroy community representation, would the Constitution require that the jury reflect the attitudes of younger persons. Of course, no questions of the sort are presented by this case.

cense hardly is the same as freely opening juvenile proceedings to the news media on the general spectator; and whether to permit the general public on the news media into Juvenile Court proceedings is a matter in the discretion of the trial judge. N.C. Gen. Stat. §§ 110-24; 7A-285.[20] See also *Task Force Report: Juvenile Delinquency and Youth Crime* 38 (President's Commission on Law Enforcement and the Administration of Justice, 1967). Jury trials would consequently present threat to privacy only in exceptional cases where a special need for complete secrecy exists. In such cases, jurors could be instructed by the trial judge that certain elements of the proceedings before them should not be revealed, but the problem of secrecy is unlikely to arise in any acute form, since where there is an acute need for secrecy, the juvenile and his counsel could simply waive trial by jury.

To deny jury trials to juveniles who want them on the ground that others may want total privacy is not merely unnecessary and other-worldly in light of the present spotty confidentiality of juvenile court proceedings. Unwanted total privacy presents dangers of its own, for there are serious risks encountered by *in camera* proceedings when liberty is at stake, *In Re Oliver*, 333 U.S. 257 (1948). Not only is the potential for arbitrariness in general, and discrimination against the disadvantaged in particular, magnified; but a consequence of total secrecy is that the juvenile courts themselves tend to escape healthy public scrutiny. The serious discrepancies between juvenile court theory and practice, discussed at length in *Gault*, are unlikely to be eliminated until the juvenile courts of the nation are accountable to their communities. If juveniles have a right to a public trial then, of course, considerations of privacy can-

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[20]A distinguished California juvenile court judge has required that court personnel withhold the names of persons under 18 years of age alleged to have committed any public offense from all public media. See *Refusal to Modify Court Rule that Names of Juveniles Be Withheld From Press*, 14 Crime and Delinquency 261 (1968).

not be urged to deny them jury trials.[21] But we make no claim in this Court that public trials are a matter of right in all cases. Our point is the limited one that such benefits as are derived from privacy will not be seriously impaired by allowing a juvenile to elect a jury trial as long as the juvenile judge retains discretion to govern the conduct of persons before him.

Plainly, the most important benefits to youth claimed for the juvenile court system–discretionary pre-screening of complaints and the availability of a wider range of correctional alternatives–will not be affected by the availability of jury trials. Assuming such aspects of juvenile court administration are actually benefits, they would in no way be adversely affected by providing jury trials to young people who wish them. Police or judicial discretion, for example, not to process a complaint or to reduce or alter a charge against a juvenile would not be hampered, see *Gault, supra* at 387 U.S. at 31, n. 48. But abuse of police or judicial discretion to overcharge juveniles from minority groups would be checked by the availability of a jury.[22] Such practices are all too common. A 1970 investigation by the United States Civil Rights Commission, reported many complaints alleging discriminatory treatment of Mexican-American juveniles by the police. "One of the most common was that Anglo juvenile offenders were released without charge to the custody of their parents, while Mexican-American youths were charged with offenses and jailed or

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[21]A juvenile's constitutional right to a public trial has been denied on the ground that privacy is in the best interests of the youth and insulates him from the stigma attached to criminal conviction. See A. 335; *State v. Cronin*, 220 La. 233; 56 So. 2d 242 (1951); *Dendy v. Wilson*, 142 Tex. 460, 179 S.W. 2d 269 (1944).

[22]*Cf. Conover v. Montemuro*, 304 F. Supp. 259 (E.D. Pa., 1969) where the court denied a motion to dismiss a claim that intake standards in a juvenile court were so arbitrary and irrational as to violate due process.

sent to a reformatory." *Mexican-Americans and the Administration of Justice in the Southwest*, 7 (United States Commission on Civil Rights, March 1970). The findings of the Commission were similar to those reached concerning police conduct toward black youth by the Kerner Commission. *Report of the National Advisory Commission on Civil Disorders*, 303 (Bantam, ed.). See also *The Challenge of Crime in a Free Society, supra* at 79.

In *Winship* this Court noted the importance of the distinction between adjudicatory and dispositional phases; North Carolina law recognizes the same distinction, N.C. Gen. Stats. § 7A-285. To the extent juvenile courts have meaningful dispositional alternatives at their command, a jury trial would not, of course, reduce them. On the contrary, the presence of the jury will "minimize the danger that adjudication will be affected by inappropriate considerations," such as "social investigation reports" containing rumor and hearsay (and records of prior crimes) which the President's Commission recommended should not be made known to the judge in advance of adjudication. See *In Re Gault*, supra, 387 U.S. at 57, n. 98. But to the extent that "The dispositional alternatives available even to the better endowed juvenile courts fall far short of the richness and the relevance to individual needs envisioned by the court's founders"[23] *The Challenge of Crime in a Free Society*, 80

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[23]The national failure to provide decent physical facilities for juveniles is one of the premises for the holdings in *Kent v. United States, supra* and *In Re Gault, supra*. Typical of the deplorable conditions in juvenile facilities is this description of those available in Philadelphia, Pennsylvania submitted in a report contracted for by the City by the Fels Institute of Local and State Government in 1966 (*A Plan for Juvenile Detention Facilities in Philadelphia*). After reviewing findings concerning juvenile detention the report concludes:

> The Youth Study Center is badly overcrowded, yet it accommodates only half of the detention care provided. The House of Correction [an adult prison] is used to accommodate most of the overflow capacity and it is totally inadequate as a juvenile facility. The average length of stay far exceeds reasonable standards and the facilities are "clogged"

(President's Commission on Law Enforcement and the Administration of Justice, 1967), the jury's role as fact-finder is added protection against unjustified institutionalization.[24]

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with juveniles who remain in detention longer than 60 days. The problem cannot be solved merely by the construction of additional detention facilities. An overall plan involving significant changes in policies, procedures, staffing, and disposition resources available to the Court is clearly required. (p. 26)

More than two years later the Institute submitted a supplemental report to the City. The situation was much the same and the original plans and recommendations had gone unheeded:

> 195 [juveniles] were at the Philadelphia Prison. This figure is the highest in at least a 16 month period. Length of stay for some juveniles is outrageously high. There is no system of records or controls to provide a basis for the proper administration of juvenile detention. (1968 *Fels Study* at iv).

[24]The 1967 Report of the President's Crime Commission made no specific recommendation concerning provision of jury trials. A paper published in *Juvenile Delinquency* and *Youth Crime* a Commission Task Force Report, enumerates arguments against jury trial. The paper, however, was written before the *Gault* decision and its authors noted that it did not reflect that decision and consequent changes in the conception of the juvenile court process. It is significant that the report leans heavily upon the opinion of Professor Monrad Paulsen, but Professor Paulsen, the noted scholar of the juvenile courts, who concluded that jury trials were not appropriate in 1957, had apparently altered his view a decade later:

> In my view the reformers, in their desire to distinguish sharply between juvenile and criminal proceedings and in the hope that children would be processed as patients in a clinic or given social education as in school, put too much emphasis on the need for informal procedure.
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> Certainly, too, the reformers were mistaken about the opportunity for treatment presented by a few minutes in court. Not many today would agree that a judge who puts his arm around a boy gains "immensely in the effectiveness of his work."
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> The right to jury trial is preserved in some states and the juvenile courts still function and with jury trials, although, in fact, the right is usually waived. Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966, Supreme Court Review 167, 186.

Indeed, it is primarily because administration of such benefits as may be made available to the juvenile involves the very broadest allowance of discretion at other stages, that the adjudicatory stage of delinquency proceedings must be formal and objective. Under traditional juvenile court practice the judge was all too free to find the child delinquent based on his evaluation of the child's needs rather than his deeds. To the extent this attitude still governs juvenile court judges, there is in fact no practical check on their power unless a jury trial is available.[25]

But experience demonstrates the need for such a check. Studies conducted by the President's Crime Commission in 1967 confirmed the underlying reasoning of this Court's decisions in the *Kent* and *Gault* cases by establishing that the promises held out by the juvenile court have not been fulfilled:

> "It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the child offender." *(Challenge of Crime in a Free Society, supra* at 80)

The Commission pointed out that among the reasons for the failure of the juvenile courts was society's continued unwillingness to provide manpower, trained specialists, and adequate treatment facilities necessary to carry out its therapeutic ambitions. A particularly disturbing aspect of juvenile court administration was that the juvenile judge–the person upon whom the success of its special role rested –was all too often insufficiently trained for his heavy responsibilities and deprived of the necessary back-up assist-

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[25]It is well to remember "that out of the great universe of criminal controversies," those leading to jury trial "are likely to be the more controversial cases where in the nature of things, the chances of disagreement are increases." Kalven & Zeisel, *The American Jury* 31 (1966).

ance from physicians, social workers, and community workers in devising treatment. Dispositional alternatives were modest, and the institutionalization, which was supposed to set the youngster on the right path, was indistinguishable from adult incarceration and often meant warehousing.[26] Finally, the Commission concluded that even under ideal conditions it was extremely difficult to develop successful methods for preventing serious delinquent acts through rehabilitation. Delinquency, research has made clear, is a pattern of behavior with deep roots in the society itself.[27]

The Commission's profile of the reality of the juvenile court, and of the setting in which it actually operates, has important consequences for any decision concerning the procedural guarantees that should be available to the individual child who is subject to incarceration. If the juvenile court behaves generally in much the same manner as any other criminal court, it is impossible to justify making unavailable the protections which are recognized as constituting due process of law in serious criminal cases.

It is against this background that the view must be appraised of those juvenile court judges who oppose making jury trials available in juvenile cases on the ground that it would burden judicial administration. Like most trial judges, juvenile judges are often grievously overworked and under-equipped for their demanding task. These conditions

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[26] *The Challenge of Crime in a Free Society, supra*, 80. The Commission noted that juvenile courts often behave as any other criminal court and consider deterrence and punishment as well as the welfare of the child in determining disposition. *Ibid.*

[27] The conventional pleas for better legislation, more money and more manpower have been criticized as insufficient to reduce the incidence of delinquency. See Kvaraceus, *Delinquency Prevention: Legislation Finance and Law Enforcement Are Not Sufficient*, 15 Crime and Delinquency, 463 (1969).

are not now the product of jury trials; their cause is the lack of commitment of adequate resources noted by the National Crime Commission; and if lack of adequate resources disables the juvenile courts from performing as they are supposed to perform, this seems to us a strong reason for, not against, the safeguard of jury trial.

But this Court has, in any event, consistently rejected arguments urging limitation *in the definition* of constitutional rights because of crowded court dockets. *Baldwin v. New York*, 38 U.S.L. Week 4554 (June 20, 1970); *Fay v. Noia*, 372 U.S. 391 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Douglas v. California*, 372 U.S. 353 (1963); *Baxstrom v. Herold*, 383 U.S. 107 (1966); *United States v. Wade*, 388 U.S. 218 (1967); *Gilbert v. California*, 388 U.S. 263 (1967).[28] Long ago Blackstone warned against restriction of the right to jury trial under the guise of expedience:

> "And, however convenient, these may appear at first (as doubtless all arbitrary powers well executed, are to most convenient), yet let it be again remembered, that delays and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution. . ." 4 *Blackstone, Commentaries* 350 (Cooley Ed. 1899).

This Court has said that the right to trial by jury "is not held by sufferance, and cannot be frittered away on any plea of state or political necessity." *Ex parte Milligan*, 71 U.S. 2, 123 (1866); and see also *Green v. United States*, 356 U.S. 165, 216 (1958) (Mr. Justice Black dissenting).

[28]Such consideration has come in the limitation to retroactive application of newly defined constitutional rights. Where this has occurred, consideration of reliance by state officials upon prior decisions of the Court and the non-essentiality of newly declared rights to the integrity of the fact-finding process, have been accorded equal if not greater weight. See, *Stovall v. Denno*, 388 U.S. 283 (1967); *Johnson v. New Jersey*, 384 U.S. 719 (1966); *Linkletter v. Walker*, 381 U.S. 618 (1965); *De Stefano v. Woods*, 392 U.S. 631 (1968).

Experience suggests, finally, that practical difficulties which may be encountered are manageable. A substantial number of jurisdictions now make a jury trial available in juvenile court proceedings without ill effect.[29] Most juve-

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[29]The following statutes provide for a jury trial in juvenile court:

Colo. Rev. Stat. Ann. § 37-8-2 (1964) (Jury trial in same way as for selection of juries in county courts for trial of misdemeanors prosecuted in those courts). *D.C. Code Encyclopedia* § 16-2307 (1961) (No jury trial *unless* a jury is demanded by child, parent, guardian.) *Kan. Gen. Stat. Ann.* § 38-808 (Supp. 1967) (Where a child under 18 years commits an act which, if done by a person 18 years or over, would be a felony, judge of juvenile court may refer child to district court for trial by jury. After a verdict that child is delinquent, district court shall remand case to juvenile court for judgment). *Mich. Comp Laws Ann.* Ch. 712A.17 (1968) (Jury trial of 6. Judge may also order a jury trial). *Mont. Rev. Code Ann.* § 10-603 (1947) (Child, parent or guardian, or other person having the care, custody, or control of such child may demand a jury trial. Judge, on his own motion may order a jury trial.). *Okla. Stat. Ann. Tit.* 10 § 1110 (Supp. 1968) (Child, or any person interested in child, shall have right to demand trial by jury. Court may also order a jury trial.) *S.D. Code* § 27-8-31 (1967) (Jury of 6 may try juvenile case). *Tex. Rev. Civ. Stat. Ann.* 2338-1, § 13(6) (Vernon Supp. 1968) (If no jury is demanded, the judge shall proceed with hearing.). *W.Va. Code Ann.* § 49-5-6 (1966) (An interested person may demand, or court on its own motion, may order a jury of 12.). Wisc. Stat. Ann. § 48.25(2) (1957) (Jury trial authorized if demanded). *Wyo. Stat. Ann.* § 14-108(c) (1961) (Jury trial permitted at request of child or his legal guardian.)

In *Nieves v. United States*, 280 F. Supp. 994 (S.D. N.Y. 1968) a three-judge federal court held that juveniles must be afforded a jury trial in delinquency proceedings under the Federal Juvenile Delinquency Act, in part because the Act is in nature a criminal prosecution governed by the Sixth Amendment.

In *Re Rindell*, 2 Cr. L. Rptr. 3121 (1968) the Providence Rhode Island Family Court held that the Fourteenth Amendment required trial by jury be afforded a child charged before the court with an offense that, if committed by an adult, would constitute a felony.

In *Peyton v. Nord*, 79 N.M. 717, 437 P.2d 716 (1968) the Mexico Supreme Court held that juveniles have a right to

nile courts, moreover, dispose of an enormous proportion of their cases short of adjudication, see *Task Force Report: Juvenile Delinquency and Youth Crime, supra* at 14. Often, as in North Carolina, a conference between interested persons is authorized which may result in avoiding subsequent court proceedings, N.C. Gen. Stat. § 7A-281; cf. N. Y. Family Ct. Act § 734 (1963). In those jurisdictions where a jury trial has been available, it is often waived as in adult criminal proceedings.[30] "A fundamental fact about the jury trial is that it is the mode of final disposition for only a small fraction of all criminal prosecutions," Kalven and Zeisel, *The American Jury* 14, 31 (1966). It is commonplace, moreover, that in those urban courts where a backlog of cases would likely develop there is an exceptionally

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jury trial notwithstanding the labeling of their conduct as an act of delinquency. The New Mexico legislature enacted New Mexico Stat. Ann. § 13-8-49 subsequent to the court's decision.

See also *In Re Daniel Richard O.*, 34 A.D. 2d 41 (App. Div. 4th Dept., N.Y. 1970) (Jury Trial granted citing *Duncan*, supra.)

[30]The District of Columbia Juvenile Court *Annual Report* for fiscal 1969 (p. 9) contains the following information:

> In fiscal 1968, 32 jury trials were held, as compared with 3,196 court hearings. In fiscal 1969, there were 28 jury trials, and 2,863 court hearings.

There were 1892 delinquency petitions filed in the Denver, Colorado Juvenile Court in 1969; 13 resulted in jury trials (letter of May 26, 1970 from Judge Ted Rubin to Jeffrey E. Glen, Associate Counsel, National Council on Crime and Delinquency). During 1969 New Mexico juvenile courts conducted "Seven or Eight Jury Trials" (Letter of June 10, 1970 from District Judge Samuel Z. Montoya to Mr. Glen.)

heavy incidence of jury trial waivers.[31] *Ibid.* As jury trials are granted in all American jurisdictions, even in misdemeanor cases (see *Baldwin v. New York*, supra), the requirement of jury trials in juvenile court would not force upon the states a practice with which they are unfamiliar or which they are unable to provide. While the number of jury trials can be expected to rise should this court hold that the Fourteenth Amendment entitles a juvenile to claim trial by jury, it is unlikely that the practical problems involved will be unresolvable,[32] especially in light of this Court's decision approving the use of six man juries in *Williams v. Florida*, 38 U.S.L. Week 4557 (June 10, 1970).

CONCLUSION

Recent studies attest to what trial lawyers have always believed—the efficacy of the jury as a fact-finding mechanism, Kalven and Zeisel, *The American Jury, Passim* (1966). Juvenile court judges have not demonstrated superiority to juries in determining whether a law violation has been committed. Their expertise presumably lies in selection among

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[31]To deny jury trials because of court congestion would be to compromise with assembly line justice where it is most destructive. The poor are most likely to be brought before a juvenile court in urban areas and the procedures and defense services which are made available to them are often unsatisfactory. The vital function of the jury as a protection against such conditions is a major reason for its privileged role in our tradition. Where the volume of cases is heavy, the jury assures the defendant of at least a fresh fact-finding body which is not case-hardened.

[32]See Newman *Conviction: The Determination of Guilt or Innocence Without Trial*, 3-4 (1966); Kalvin and Zeisel, *The American Jury*, 19, (1966). California, for example, provides its citizens with jury trials for all criminal offenses, including traffic violations, but only approximately 3% of all misdemeanor trials are actually conducted before a jury with the figure rising to slightly more than 10% in Los Angeles, *ibid*. See also the figures contained in appellant's brief in *Baldwin v. New York, supra*, p. 33, n. 35.

dispositional alternatives and in formulation of plans of individualized treatment. The issues in the delinquency trial of a law violation are the same as in a criminal trial of the same offense. The jury function of weighing the evidence, evaluating credibility of witnesses, and finding the facts are no more difficult with respect to whether a juvenile committed a crime. "Other values of the jury system—as a bulwark against possible judicial arbitrariness, as an assurance that each case will receive individual attention and not become another item on the assembly line of an overworked judge, and as a means of filtering the enacted criminal law through current community standards of guilt—are as applicable for juvenile as for adult offenders." (Dorsen and Rezneck: *In Re Gault and The Future of Juvenile Law*, *supra* at 33). Moreover, the hard won right of blacks to a trier of fact representative of the entire community is surely as significant a protection to black youth as black adults.

The fact is that an informal and flexible juvenile court procedure has not provided fairness or reliability for the juvenile.[33] Efforts to help youth are not likely to succeed if

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[33]In an exhaustive study of juvenile misconduct prepared for the National Institute of Mental Health by Professor Marvin E. Wolfgang of the University of Pennsylvania Center for Studies in Criminology and Criminal Law a primary conclusion was that experience with juvenile courts and correctional institutions failed to reduce either the volume or intensity of juvenile crime in the studied group. *Delinquency in a Birth Cohort*, Center for Studies in Criminology and Criminal Law (Mimeo 1970) Chapter XIV, pp. 13, 14:

> Finally, we may briefly note that the effect of disposition on the offense histories of the cohort members is unclear. It appears that the criminal justice system has been able to isolate the hard core offender fairly well. *Unfortunately, the product of this encounter with sanctioning authorities is far from desirable. Not only do a greater number of those who receive punitive treatment (institutionalization, fine, or probation) continue to violate the law, but they also commit more serious crimes with greater rapidity than those who experience a less intimate contact with the judicial and correctional systems. Thus we must conclude that the juvenile justice system at its best, has no effect on the subsequent criminal behavior of adolescent boys and at its worst, has a deleterious effect on future behavior.* (emphasis supplied)

they are not based on reliable determinations of factual questions because youths will not then be persuaded that they have been treated justly. Before we permit a state to interfere with the life of an individual even in the name of his best interest, fairness and reliability are essential. Given the history of the juvenile court in America, one must conclude that the "promise of the Juvenile Court to help the child, to rehabilitate him, to lead him into a healthy and constructive life, has not been kept." *The Challenge of Crime in a Free Society, supra* at 85. There is thus no rationale for the withdrawal of trial by jury to juveniles, such as petitioners, subject to long periods of involuntary incarceration.

WHEREFORE, petitioners pray that the judgment below be reversed.

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APPENDIX OF NORTH CAROLINA CONSTITUTIONAL AND STATUTORY PROVISIONS

N.C. CONSTITUTION, ARTICLE I

§ 13. Right of jury.—No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open court. The Legislature may, however, provide other means of trial, for petty misdemeanors, with the right of appeal.

§ 7A-278. Definitions.—The terms or phrases used in this article shall be defined as follows, unless the context or subject matter otherwise requires:

(1) "Child" is any person who has not reached his sixteenth birthday.

(2) "Delinquent child" includes any child who has committed any criminal offense under State law or under an ordinance of local government, including violations of the motor vehicle laws or a child who has violated the conditions of his probation under this article.

(3) "Dependent child" is a child who is in need of placement, special care or treatment because such child has no parent, guardian or custodian to be responsible for his supervision or care, or whose parent, guardian or custodian is unable to provide for his supervision or care.

(4) "Neglected child" is any child who does not receive proper care or supervision or discipline from his parent, guardian, custodian or other person acting as a parent, or who has been abandoned, or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law.

(5) "Undisciplined child" includes any child who is unlawfully absent from school, or who is regularly disobedient to his parents or guardian or custo-

dian and beyond their disciplinary control, or who is regularly found in places where it is unlawful for a child to be, or who has run away from home.

(6) "Court" means the district court division of the General Court of Justice, except as otherwise specified.

(7) "Custodian" is a person or agency that has been awarded legal custody of a child by a court, or a person other than parents or legal guardian who stands in loco parentis to a child.

§ 7A-279. **Juvenile jurisdiction.**—The court shall have exclusive, original jurisdiction over any case involving a child who resides in or is found in the district and who is alleged to be delinquent, undisciplined, dependent or neglected, or who comes within the provisions of the Interstate Compact on Juveniles except as otherwise provided. This jurisdiction shall be exercised solely by the district judge.

§ 7A-281. **Petition.**—Any person having knowledge or information that a case has arisen which invokes the juvenile jurisdiction established by this article may file a verified petition with the clerk of superior court. The petition shall contain the name, age and address of the child, the name and last known address of his parents or guardian or custodian, and shall allege the facts which invoke the juvenile jurisdiction of the court.

After a petition is filed, any judge exercising juvenile jurisdiction may arrange for evaluation of juvenile cases through the county director of social services or the chief family counselor or such other personnel as may be available to the court. The purpose of this procedure is to use available community resources for the diagnosis or treatment or protection of a child in cases where it is in the best interest of the child or the community to adjust the matter without a formal hearing.

§ 7A-282. Issuance of summons.—After a petition is filed and when directed by the court, the clerk of superior court shall cause a summons to be issued directed to the parents or guardian or custodian and to the child, requiring them to appear for a hearing at the time and place stated in the summons.

§ 7A-283. Service of summons and petition.—The summons and a copy of the petition shall be served upon the parents or either of them or the guardian or custodian, and the child, not less than five days prior to the date scheduled for the hearing, provided that the time provided herein may be waived in the discretion of the judge in the best interest of the child. Service of the summons and petition shall be made personally by leaving a copy of the summons and the petition with the person summoned. If personal service upon a parent is attempted at his last known address but such parent cannot be located, and there is no parent, guardian or custodian available to appear with the child for the hearing, the court shall appoint a guardian ad litem or a guardian of the person to appear with the child.

If the court finds it is impractical to obtain personal service upon the parents, guardian or custodian, the judge may authorize service of summons and petition by mail or by publication, provided that a guardian or custodian shall appear with the child for the hearing if neither parent is present.

If the parent, guardian or custodian is personally served as herein provided and fails without reasonable cause to appear and to bring the child, he may be proceeded against as for contempt of court.

§ 7A-284. Immediate custody of a child.—If it appears from a petition that a child is in danger, or subject to such serious neglect as may endanger his health or morals, or that the best interest of the child requires that the court assume immediate custody of the child prior to a hearing on the merits of the case, the judge may enter an order directing an officer or other authorized person to assume imme-

diate custody of the child. Such an order shall constitute authority to assume physical custody of the child and to take the child to such place or person as is designated in the order. The court shall conduct a hearing on the merits at the earliest practicable time within five days after assuming custody, and if such a hearing is not held within five days, the child shall be released.

§ 7A-285. Juvenile hearing.—Juvenile hearings shall be held in each county in the district at such times and places as the chief district judge shall designate. The general public may be excluded from any juvenile hearing in the discretion of the judge. Reporting of juvenile cases shall be as provided by G.S. 7A-198 for reporting of civil trials.

The juvenile hearing shall be a simple judicial process designed to adjudicate the existence or nonexistence of any of the conditions defined by G.S. 7A-278 (2) through (5) which have been alleged to exist, and to make an appropriate disposition to achieve the purposes of this article. In the adjudication part of the hearing, the judge shall find the facts and shall protect the rights of the child and his parents in order to assure due process of law, including the right to written notice of the facts alleged in the petition, the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination. In cases where the petition alleges that a child is delinquent or undisciplined and where the child may be committed to a State institution, the child shall have a right to assigned counsel as provided by law in cases of indigency.

The court may continue any case from time to time to allow additional factual evidence, social information or other information needed in the best interest of the child. If the court finds that the conditions alleged do not exist, or that the child is not in need of the care, protection or discipline of the State, the petition shall be dismissed.

At the conclusion of the adjudicatory part of the hearing, the court may proceed to the disposition part of the hearing, or the court may continue the case for disposition after the juvenile probation officer or family counselor or

other personnel available to the court has secured such social, medical, psychiatric, psychological or other information as may be needed for the court to develop a disposition related to the needs of the child or in the best interest of the State. The disposition part of the hearing may be informal, and the court may consider written reports or other evidence concerning the needs of the child.

The child or his parents, guardian or custodian shall have an opportunity to present evidence if they desire to do so, or they may advise the court concerning the disposition which they believe to be in the best interest of the child.

In all cases, the court order shall be in writing and shall contain appropriate findings of fact and conclusions of law.

§ 7A-286. Disposition.—The judge shall select the disposition which provides for the protection, treatment, rehabilitation or correction of the child after considering the factual evidence, the needs of the child, and the available resources, as may be appropriate in each case. In cases where the court finds a factual basis for an adjudication that a child is delinquent, undisciplined, dependent or neglected, the court may find it is in the best interest of the child to postpone adjudication or disposition of the case for a specified time or subject to certain conditions.

In any case where the court adjudicates the child to be delinquent, undisciplined, dependent or neglected, the jurisdiction of the court to modify any order of disposition made in the case shall continue during the minority of the child or until terminated by order of the court, except as otherwise provided herein, provided that any child subject to the juvenile jurisdiction of the court shall be subject to prosecution in any court for any offense committed after his sixteenth birthday.

The court shall have a duty to give each child subject to juvenile jurisdiction such attention and supervision as will achieve the purposes of this article. Upon motion in the clause or petition, and after notice as provided in this article, the court may conduct a review hearing to determine

whether the order of the court is in the best interest of the court may modify or vacate the order in light of changes in circumstances on the needs of the child.

The following alternatives for disposition shall be available to any judge exercising juvenile jurisdiction:

(1) The judge may dismiss the case, or continue the case in order to allow the child, parents or others to take appropriate action.

(2) In the case of any child who needs more adequate care or supervision, or who needs placement, the court may:

a. Require that the child be supervised in his own home by the county department of social services, juvenile probation officer, family counselor or such other personnel as may be available to the court subject to such conditions applicable to the parents or the child as the court may specify; or

b. Place the child in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the child in the custody of the county department of social services in the county of his residence, or in the case of a child who has legal residence outside the State, in the temporary custody of the county department of social services in the county where the child is found so that said agency may return the child to the responsible authorities.

In any case where the court removes custody from a parent, the court may order any parent who appears in court with such child to pay such support for the child as may be reasonable under the circumstances, or after notice to the parent as provided in this article, the court may hold a hearing and order such parent to pay such support as may be reasonable under the circumstances.

(3) In the case of any child who is alleged to be delinquent or undisciplined and where the court finds it necessary that such child be detained in secure custody for the protection of the community or in the best interest of the child before or after a hearing on the merits of the case, the court may order that such child be detained in a juvenile detention home as provided in G.S. 110-24, or if no juvenile detention home is available, in a separate section of a local jail which meets the requirements of G.S. 110-24, provided the court shall notify the parent, guardian or custodian of the child of such detention. No child shall be held in any juvenile detention home or jail for more than five days without a hearing under the special procedures established by this article. If the judge orders that the child continue in the detention home or jail after such hearing, the court order shall be in writing with appropriate findings of fact.

(4) In the case of any child who is delinquent or undisciplined, the court may:

a. Place the child on probation for whatever period of time the court may specify, and subject to such conditions of probation as the court finds are related to the needs of the child and which the court shall specify, under the supervision of the juvenile probation officer or family counselor; or

b. Continue the case in order to allow the family an opportunity to meet the needs of the child through more adequate supervision, or placement in a private or specialized school, or placement with a relative, or through some other plan approved by the court; or if the child is delinquent, the court may

c. Commit the child to the care of the North

Carolina Board of Juvenile Correction to be assigned to whatever facility operated by such Board as the Board or its administrative personnel may find to be in the best interest of the child. Said commitment shall be for an indefinite term, not to extend beyond the eighteenth birthday of the child, as the Board or its administrative personnel may find to be in the best interest of the child, provided that if a child is engaged in a vocational training program when he becomes eighteen years of age, the Board may extend the indefinite term of such child beyond the eighteenth birthday until the vocational training program is completed. The Board or its administrative personnel shall have final authority to determine when any child who has been admitted to any facility operated by the Board has sufficiently benefitted from the program as to be ready for release. At the end of any term, the Board shall notify the court that the child is ready for release and shall plan for the return of the child to the community in cooperation with the juvenile probation officer or the family counselor or such other appropriate personnel as may be available. If the Board finds that any child committed to its care is not suitable for the program of any facility operated by the Board, or that further court action is needed to protect the best interest of a child at the end of his term, the Board shall make a motion in the cause so that the court may enter an appropriate order.

(5) In any case, the court may order that the child be

examined by a physician, psychiatrist, psychologist or other professional person as may be needed for the court to determine the needs of the child. If the court finds the child to be in need of medical, surgical, psychiatric, psychological or other treatment, the court may allow the parents or other responsible persons to arrange for such care. If the parents decline or are unable to make such arrangements, the court may order the needed treatment, surgery or other needed care, and the court may order the parents or other responsible parties to pay the cost of such care, or if the court finds the parents are unable to pay the cost of such care, such cost shall be a charge upon the county when approved by the court. If the court finds the child to be in need of institutional care because of mental illness or mental retardation, the court may commit the child to the appropriate institution operated by the State, provided two physicians certify in writing that such commitment is in the best interest of the child and the State. After such commitment, the child may be released only by the governing board or administrative personnel of such State institution, who shall report on the court from time to time on the progress of such child and who shall return the child to the court upon release during his minority for such further orders as the court finds to be in the best interest of the child.

(6) In any case where there is no parent to appear in a hearing with the child or where the court finds it would be in the best interest of the child, the court may appoint a guardian of the person for the child, who shall operate under the supervision of the court with or without bond, and who shall file only such reports as the court shall require. Such guardian of the person shall have the care,

custody and control of the child or may arrange a suitable placement for the child, and may represent the child in legal actions before any court. Such guardian of the person shall also have authority to consent to certain actions on the part of the child in place of the parents, including but not limited to marriage, enlisting in the armed forces, major surgery, or such other actions as the court shall designate where parental consent is required. The authority of the guardian of the person shall continue for whatever period of time the court shall designate during the minority of the child.

§ 7A-287. Juvenile records.—The court shall maintain a complete record of all juvenile cases to be known as the juvenile record, which shall be withheld from public inspection and may be examined only by order of the judge, except that the child, his parents, guardian, custodian and attorney, or other authorized representative of the child shall have a right to examine the child's juvenile record.

The juvenile record may be divided into two parts, social and legal:

(1) The social part of the juvenile record may include family background information or reports of social, medical, psychiatric, psychological or other information concerning a child or his family, or a record of the probation reports of a child or interviews with his family, or other information which the judge finds should be protected from public inspection of the best interest of the child. The social part of the juvenile record may be filed separate from other records of the court under rule of the Administrative Office of the Courts.

(2) The legal part of the record includes the summons, petition, court order, written motions, the transcript of the hearing and other papers filed in the proceeding.

An adjudication that a child is delinquent or undisciplined shall not disqualify the child for public office nor be considered as conviction of any criminal offense.

§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice or with deceit and intent to defraud.–

(a) Except as provided in subsection (b), every person who shall be convicted of any misdemeanor for which no specific punishment is prescribed by statute shall be punishable by fine, by imprisonment for a term not exceeding two years, or by both, in the discretion of the court.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, on with deceipt and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a felony and punishable as prescribed in § 14-2.

§ 110-21. Exclusive original jurisdiction over children.– The superior courts shall have exclusive original jurisdiction of any case of a child less than sixteen years of age residing in or being at the time within their respective districts:

(1) Who is delinquent or who violates any municipal or State law or ordinance or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so; or

(2) Who is neglected, or who engages in any occupation, calling, or exhibition, or is found in any place where a child is forbidden by law to be and for permitting which an adult may be punished by law, or who is in such condition or surroundings or is under such improper or insufficient guardians or control as to endanger the morals, health, or general welfare of such child; or

(3) Who is dependent upon public support or who is destitute, homeless, or abandoned, or whose custody is subject to controversy.

When jurisdiction has been obtained in the case of any child, unless a court order shall be issued to the contrary, or unless the child be committed to an institution supported and controlled by the State, it shall continue for the purposes of this article during the minority of the child. The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the State.

§ 110-22. Probation conditions; revocation.—When the court places any child on probation, the court order shall specify the conditions of probation and the period of time the child shall remain on probation. The conditions of probation and the period of time the child shall remain on probation shall be designed by the court to meet the needs of the child and may include any of the following or such other conditions of probation as the court may order in the best interest of the child:

(1) That the child shall remain on good behavior and not violate any laws;
(2) That the child attend school regularly;
(3) That the child not associate with specified persons or be in specified places;
(4) That the child report to the probation officer as often as required by the probation officer;
(5) That the child make specified financial restitution or pay a fine;
(6) That the child be employed regularly if not attending school.

The court may review the progress of any child on probation at any time during the period of probation. The conditions of probation or the period of time on probation may be modified as may be appropriate in a particular case, provided there is notice and a hearing as provided by article 23 of chapter 7A. If a child violates the conditions of his probation, such child may be required to appear before the court after notice, and the court may make any dispo-

sition of the matter that it might have made when the child was placed on probation. At the end of a child's period of probation, the child shall appear after notice of a hearing with the juvenile probation officer so that the court may evaluate the child's need for continued supervision, and the judge may terminate the probation, continue the child on probation under the same or modified conditions for a specified term, or enter such other order as the court may find to be in the best interest of the child.

§ 110-23. Definitions of terms.—(a) The term "adult" shall mean any person sixteen years of age or over.

(b) The term "child" shall mean any minor less than sixteen years of age.

(c) The term "court" when used in this article without modification shall refer to the juvenile courts to be established as herein provided.

(d) The term "judge" when used in this article shall refer to the clerk of the superior court acting as judge of the juvenile court, or to the other appointed judge, or to the judge of the joint city and county juvenile court elected as provided in § 110-22.

§ 110-24. Detention homes.—It shall be unlawful for any child coming within the provisions of article 23 of chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except as herein provided.

Children who are alleged or adjudicated to be delinquent or undisciplined and who require secure custody for the protection of the community or in the best interest of the child may be temporarily detained in a juvenile detention home, which shall be separate from any jail, lockup, prison or other adult penal institution. A juvenile detention home shall be located in a building designed to provide secure custody and shall have such personnel as may be necessary to provide for the supervision and safety of the children being detained. A detention home shall be operated as a

family home according to the standards applicable to juvenile detention facilities adopted by the State Board of Social Services under G.S. 153-52 and under the supervision of the judges exercising juvenile jurisdiction in the district. Personnel employed in a detention home may be appointed by the unit of government which operates the program, except that such appointments shall be approved by the State Department of Social Services. The program of a detention home shall be designed as far as possible to provide wholesome activities in the best interest of the children placed therein.

If there is no detention home available, the judge may arrange for the care of a child requiring secure custody in a private home, a foster home or in any other available child-care facility. When the judge finds there is a pressing need that a child be held in secure custody and there is no juvenile detention home available to the judge, the judge may order the temporary detention of such child in any section of a local jail which is so arranged that the child cannot converse with, see or be seen by the adult population of the jail while being detained, provided that the jailer or other personnel responsible for administration of the jail shall provide close supervision of any child so detained for the protection of the child.

§ 110-25. Petition to bring child before court.—Any person having knowledge or information that a child is within the provisions of this article and subject to the jurisdiction of the court, may file with the court a petition verified by affidavit, stating the alleged facts which bring such child within such provisions. The petition shall set forth the name and residence of the child and of the parents, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact.

§ 110-26. Issuance of summons; traveling expenses allowed.—Upon the filing of the petition or upon the taking

of a child into custody, the court may forthwith, or after an investigation by a probation officer or other person, cause to be issued a summons signed by the judge or the clerk of the court directed to the child, unless such child has been taken into custody, and to the parent, or, in case there is no parent, to the person having the guardianship, custody, or supervision of the child, or the person with whom the child may be, requiring them to appear with the child at the place and time stated in the summons to show cause why the child should not be dealt with according to the provisions of this article.

The judge may in his discretion authorize the payment of necessary traveling expenses incurred by any witness or person summoned or otherwise required to appear at the hearing of any case coming within the provisions of this article. Such expenses shall be a charge upon the county in which the petition is filed.

§ 110-27. Custody of child may be immediate; release; bail.—If it appears from the petition that the child is embraced within subdivision (1) of § 110-21, or is in such condition or surroundings that the welfare of the child requires that its custody be immediately assumed, the court may endorse or cause to be endorsed upon the summons a direction that the officer serving the same shall at once take such child into his custody.

In the case of any child who has been taken into custody or pending the final disposition of any case, the child may be released in the custody of a parent or other person having charge of the child or in the custody of a probation officer or other person appointed by the court, to be brought before the court at the time designated. Any child embraced in this article may be admitted to bail as provided by law. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as hereinafter provided for.

§ 110-29. Hearing; disposition of child.—Upon the return of the summons or other process or after any child has been

taken into custody, at the time set for the hearing, the court shall proceed to hear and determine the case in a summary manner. The court may adjourn the hearing from time to time and inquire into the habits, surroundings, condition and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the welfare of the child and carry out the objects of this article. In all cases the nature of the proceedings shall be explained to the child and to the parents or the guardian or person having the custody or the supervision of the child. At any stage of the case the court may, in its discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied that the child is in need of the care, protection or discipline of the State, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guardianship. Thereupon the court may:

(1) Place the child on probation subject to the conditions provided hereinafter; or

(2) Commit the child to the custody of a relative or other fit person of good moral character, subject, in the discretion of the court, to the supervision of a probation officer and the further orders of the court; or

(3) Commit the child to the custody of the county department of public welfare of the county wherein said child has legal residence to be placed by said department in a suitable home as designated in subdivision (4) of this section. The county department of public welfare to which custody is awarded shall be responsible for the general oversight and supervision of the child and shall pay the cost of care for said child. The juvenile court taking jurisdiction shall have the authority to determine the legal residence of the child and to award custody of said child to the county welfare department of the county which has been

determined by the court to be the legal residence of the child. Provided, however, that if it should appear to the judge of the juvenile court exercising jurisdiction over said child that the child might be a legal resident of some county other than the county in which said court is sitting, that the judge of said court shall not enter any final order pertaining to the custody of said child until at least ten days' notice shall have been given to the county welfare department of any county which shall appear to be the county of legal residence of said child. The county welfare department thus given ten days' notice shall have an opportunity to appear and show cause, if any it has, why the legal residence of said child should not be found to be in its county; or

(4) Commit the child to a suitable institution maintained by the State or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the State and approved by the State Board of Public Welfare authorized to care for children, or to place them in suitable family houses; or

(5) Render such further judgment or make such further order of commitment as the court may be authorized by law to make in any given case.

(6) If a child of fourteen years of age be charged with a felony for which the punishment as now fixed by law cannot be more than ten years in prison his case shall be investigated by the probation officer and the judge of the juvenile court as provided for in this article, unless it appears to the judge of the juvenile court that the case should be brought to the attention of the judge of the superior court, in which case the child shall be held in custody or bound to the next term of the superior court as now provided by law.

§ 110-32. Probation; conditions; revocation.—When the co places any child or adult on probation as provided in this rticle it shall determine the conditions of probation, which may be modified by the court at any time. A child shall remain on probation for such period as the court shall determine during the minority of such child. An adult shall remain on probation for such period as the court shall determine, not to exceed five years. The conditions of probation shall be such as the court shall prescribe, and may include among other conditions any or several of the following: That the probationer shall indulge in no unlawful or injurious habits; shall avoid places or persons of disreputable or harmful character; shall report to the probation officer as directed by the court or probation officers; shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; shall, if a child of compulsory school age, attend school regularly; shall, if an adult or a child who does not attend school, work faithfully at suitable employment; shall remain or reside within a specified place or locality; shall pay a fine in one or several sums; shall make restitution or reparation to the aggrieved parties for actual damages or losses caused by an offense upon such conditions as the court shall determine; and shall make payment for the support of any lawful dependents as required by the court.

Any person on probation may at any time be required to appear before the court, and in case of his failure to do so when properly notified by the probation officer, the court may issue a warrant for his arrest. In the case of a child on probation, if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time

the child was placed on probation. An adult on probation who violates any of the conditions thereof may be arrested upon a warrant issued by the court and the court may impose any penalties which it might have imposed at the time the defendant was placed on probation.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 128

In Re BARBARA BURRUS, ET AL.,

Petitioners,

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF OF THE NATIONAL COUNCIL OF JUVENILE COURT JUDGES AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

INTRODUCTORY STATEMENT

The facts of this cause, which involves the consolidated cases of forty-four (44) juvenile petitioners, the pertinent constitutional provisions, the applicable provisions of the North Carolina statutes, the questions presented, the opinion of the North Carolina Supreme Court and those of the North Carolina Court of Appeals are set out in the brief and appendix filed by the petitioners.[1] The *amicus* accepts them for

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[1]The opinion of the Supreme Court of North Carolina in this case is officially reported at 275 N.C. 157, 169 S.E.2d 879 (1969). The opinions of the North Carolina Court of Appeals are officially reported at 4 N.C. Apps. 523, 167 S.E.2d (1969) and 5 N.C. Apps. 487, 168 S.E.2d 695 (1969).

purposes of its own brief. Counsel for both parties have given their written consents to the filing of this *amicus curiae* brief in behalf of the National Council of Juvenile Court Judges.[2] In addition, the State of North Carolina, respondent herein, has agreed to yield 10 minutes of its time for oral argument to this *amicus*.

THE INTEREST OF THE AMICUS AND ITS POSITION ON THE QUESTIONS PRESENTED

A. *Interest of the Amicus.* The National Council of Juvenile Court Judges is an unincorporated association. More than 1,000 of its members are judges of the various States and the District of Columbia, vested with jurisdiction to determine juvenile cases. The judge members of the Council handle approximately 90% of the juvenile cases which are filed each year in the courts of the Nation.

It has always been the Council's belief that juvenile courts are courts of law and not social agencies. From its inception, the Council has adhered to the view that both legislation and judicial decisions in the field should be constantly studied to the end that due process of law and essential fairness to the troubled children who come before the juvenile court not be denied because of informalities of procedure that might lead to arbitrariness. Nevertheless, from ancient times children necessarily have been subject to prohibitions in the law which are not imposed upon adults. And juvenile courts, from their beginnings, have dealt almost daily with some of the practical legal problems and complexities arising from the special place that the law assigns children.

In pursuing its objectives, it has been the practice of the Council to provide legislatures and courts of last resort with the results of its collective knowledge and experience in the hope of illuminating problems that are not always fully

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[2]Hereinafter usually referred to as the "Council".

appreciated by many attorneys who rarely practice in the juvenile court, and who, when they do come into that court, are not always equipped by experience and training to distinguish between the principal focus of the criminal law—deterrence and retribution—and the principal focus of the juvenile court—reformation of a child, rather than his punishment.

B. *The Council's Position on the Issues.* This case, for the third time in recent years, provides an occasion for the Court to decide whether the Sixth Amendment, as applied to the States through the Fourteenth Amendment, requires that a juvenile be provided with an opportunity for a trial by jury before he can be adjudged a delinquent where the penalty to which he might be exposed would require a criminal trial should an adult have been so charged.[3]

The Council's basic interest in this case is that a long tested and enlightened system for the administration of justice for juveniles—a system which adheres to standards of fundamental fairness—not be jeopardized by a rigid insistence that the best interests, including adequate protection of their constitutional rights, of children not charged with crimes, can be realized only by treating them as if they were adults and so charged. The position which the Council takes in this case is identical to the position it asserts with respect to the companion case of *James McKiever and Edward Terry v. Commonwealth of Pennsylvania*, No. 322, which has been consolidated for argument with this case.[4] While the broad interests of the Council fortuitously may be allied with the

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[3]The Council participated as *amicus curiae* in two earlier cases that brought this same question to the Court. *In Re Whittington*, 391 U.S. 341 (1968), and *DeBacker v. Brainard*, 396 U.S. 28 (1969). The Council filed briefs and argued orally in both cases.

[4]The Council has not filed a separate *amicus curiae* brief in *McKiever* but wishes to make clear that it supports the appellee in that case in urging that the decision of the Pennsylvania Supreme Court should be affirmed, for the same reasons that it supports affirmance of the ruling of the North Carolina Supreme Court in this case.

more specific concerns of the respondent here and the appellee in *McKiever*, the Council takes no position on the more narrow question of the correctness of the adjudications of delinquency involved in the two cases. Rather, the Council appears in this Court solely in an attempt to present the collective knowledge and experience of its members on issues of undeniable importance to the future operation and development of juvenile court justice in the United States.

It is the Council's basic position that the twin goals of affording due process in juvenile court proceedings and at the same time preserving the reformative and rehabilitative goals of modern juvenile court systems can be achieved best by *not* requiring a jury trial in juvenile court proceedings.

SUMMARY OF ARGUMENT

I

A. The decisions of this Court on which petitioners rely in arguing that there is a constitutional right of a jury trial in the juvenile court were all cases in which the decision of the Court was arrived at through the selective absorption of certain rights guaranteed by the Bill of Rights. In each, the Court found that the denial of the particular right would be a departure from "fundamental fairness". That is the same analysis which the Court should follow in deciding whether the Sixth Amendment, as applied against the states through the Fourteenth Amendment, requires a jury trial in adjudicatory hearings conducted by the juvenile courts of the various states.

On the other hand, the petitioners' argument that the Fourteenth Amendment requires a jury trial in a juvenile court adjudication proceeds from the simplistic view that the recent decisions of this Court holding that juvenile adjudications are subject to the standards of the Due Process Clause and that due process guarantees a jury trial in state criminal proceedings and, therefore requires that the right

to a jury trial must apply to juvenile adjudications. It is *amicus's* position that this Court in pursuing the constitutional domestication of juvenile court adjudications has not proceeded with a broad brush approach of the type suggested by the petitioners. Rather, in each case, the Court has made a searching evaluation of those procedural safeguards applied in criminal proceedings that are at the very heart of assuring fundamental fairness in adjudications carrying the threat of serious loss of liberty, viewed in light of the effect of the imposition of those safeguards upon the recognized advantages of the distinctive methods of adjudication long followed in the juvenile courts. We have no quarrel with the previous decisions of this Court, which, to be sure, have enunciated standards requiring substantial changes in juvenile court procedures, but not changes which have imposed critical inhibitions upon the goal of expeditious and flexible adjudications which would be the case if the jury trial is made a constitutional prerequisite in an adjudication of juvenile delinquency.

In the landmark case of *In Re Gault*, 381 U.S. 1 (1967), there was no indication that this Court intended to fasten on juvenile court proceedings all the procedural standards required by the Fourteenth Amondment in criminal proceedings. Actually, the constitutional rights which *Gault* articulated as requirements in the juvenile court were rights which are nearly co-terminus with the minimum standards of fair procedure required for proceedings in most civil cases. The *Gault* decision and the other decisions of this Court upon which petitioners rely, therefore, do not establish that there is an automatic congruence between the procedural requirements imposed by due process in a criminal case and those imposed by due process in juvenile cases.

There is a basic supporting justification for distinguishing between criminal proceedings and those of the juvenile court. That distinction lies in the fact of a child's immaturity, a condition which is not usually presumed of adults. That condition of immaturity has been impliedly recognized by this Court in sanctioning legislative restriction of a child's

free exercise of religion rights and his right of free speech, when necessary for his protection. Do a child's due process rights occupy a higher plane than his First Amendment freedoms?

B. The critical issue in determining whether due process requires application of the Sixth Amendment's right to a jury trial in juvenile court proceedings is whether that right is so fundamental that a proceeding conducted in its absence must be said to be intrinsically unfair. *Duncan v. Louisiana*, 391 U.S. 145 (1968), does not argue to the contrary and is distinguishable from the case at bar in that the jury right sustained in that case in criminal proceedings has enjoyed long continued and universal acceptance in all American jurisdictions. Similarly, *In Re Winship*, 397 U.S. 358 (1970), where this Court held that the reasonable doubt standard was applicable both to criminal proceedings and juvenile court adjudications, also presented a situation where there was virtually unanimous adherence to the reasonable doubt standard in all common law jurisidctions since the Nation's beginnings.

At the present time, thirty-four states deny the juvenile a right to trial by jury in cases such as this. Eleven other jurisdictions grant the right, but only upon demand. Of the remaining five states, it is very probable that four of them would not grant a jury trial if the question were directly raised for decision. And even in those states where the jury trial is provided for in juvenile court proceedings, exercise of that right, at least prior to this Court's decision in *Gault*, was a very rare occurrence.

Not only has the right to a jury trial in juvenile courts been denied both by legislative action and court decision, but the opinions of the scholars and the experts in the field, with a rarely encountered dissent, have opposed the incorporation of the jury trial into juvenile court proceedings.

Nor can it be argued, as it could be in contending that the reasonable doubt standard should be observed in juvenile courts, that the jury trial is required as "a prime

instrument for reducing the risk of convictions resting on fundamental error and preserving the presumption of innocence." Indeed, as a result of this Court's decision in *Winship*, juvenile court judges now must apply the reasonable doubt standard in any future adjudication of delinquency.

Putting unenlightening labels aside, it remains true that the juvenile court system, like American administrative law, is *sui generis*. It finds analogies for the procedures it observes in other areas of the law, but the system maintains its own unique nature which was specially fashioned in order to achieve the particular purposes for which it was created.

Before transferring the jury system *in toto* to the juvenile court, some consideration should be given to the relative merits of jurors, as opposed to judges, as instruments of fair and effective factfinding. Recent studies have produced persuasive findings that juries are not significantly better equipped to find the facts than judges are. And juries can be as arbitrary as judges. However, whatever the precise merit or stature of the jury trial in criminal cases, its desirability in other proceedings is sufficiently debatable to preclude accepting its status as a fundamental necessity required by due process in juvenile court proceedings.

C. In addition, there are several substantial adverse practical consequences which might ensue if the jury trial were to be required in juvenile cases. It is it injected into the juvenile trial, it will bring with it the traditional delay, formality and inevitable "clash and clamor" of adversary proceedings with which adult jury trials so frequently are permeated. Congress took note of these accouterments of the jury trial when it very recently abolished "the cumbersome and inappropriate trial by jury formerly provided by statute in the District of Columbia." Both friends and foes of proposals to cut back some of the procedural protections enjoyed by the criminally-accused agree that the extended delays which now occur between a criminal charge and its final disposition are an abomination, unfair to many defendants and frequently gravely hurtful to the peace and security

of law-abiding citizens. The substantial contribution of the jury trial to this unpardonable delay argues strongly against its introduction into the juvenile court system, which, if it is to work at all, must set in motion at the earliest possible moment whatever special facilities and techniques it may have for the counselling, treatment, rehabilitation and reform of a troubled child. Unlike the reasonable doubt standard, which this Court required in both criminal and juvenile proceedings in *Winship, supra,* there is no question that the imposition of the jury trial in the juvenile court setting would have a significant adverse "effect on the informality, flexibility . . . [and] speed of the hearing . . ." 397 U.S. at 366.

With the jury trial will come the "public trial" required by the Sixth Amendment. The Council has the gravest doubts that anyone in this day of the widest possible news coverage by the communications media can point to any salutary effects—either from the point of view of the juvenile or from that of society—to be achieved by making adjudications of juvenile delinquency public proceedings.

A decision announcing the existence of a right to trial by jury in the juvenile court would put in question other concomitants of the right to trial by jury, such as the necessity of a unanimous verdict of such a jury. In addition, the equation of the juvenile court with the criminal court for purposes of incorporating a constitutional right to a jury trial will raise other issues concerning other processes which result in loss of liberty, such as mental commitment procedures and dependency hearings.

II

Although not expressly raised, it may be argued that denying a juvenile a jury trial where an adult would receive one in a criminal proceeding constitutes a violation of equal protection. Such an argument should be unavailing. There are many distinctions in the treatment of children recognized

in the law which are long established and well accepted. In all of them, it is the condition of being a child and the presumption of immaturity which attaches to that condition which both explains and justifies the difference in the law's treatment of the juvenile as opposed to the adult. The same reasons that justify the conclusion that due process does not require a jury trial serve also to support the conclusion that the Equal Protection Clause is not violated if he is denied the jury trial right. At the root of both conclusions is the ancient assumption, overwhelmingly supported by the teachings of psychology, biology, physiology, sociology and ordinary human experience, that a child is not the same as an adult. Therefore, treating him as a child and not as an adult is not unconstitutional, provided that he is treated fairly.

QUESTIONS PRESENTED

The determinative issue here is whether the Sixth Amendment, as applied to the States through the Due Process Clause of the Fourteenth Amendment, requires a trial by jury of a juvenile in a juvenile court for an offense which, if committed by an adult, would require a jury trial if requested. Additionally, however, though not expressly raised below, the issue presented may carry equal protection implications; *i.e.*, is it an invidious discrimination not to provide the opportunity for a trial by jury to a juvenile where it would be provided if an adult were involved in the same situation? For the reasons which it states below, the Council believes that both of these questions should be answered in the negative.

ARGUMENT

I. DUE PROCESS DOES NOT REQUIRE THE RIGHT OF A JURY TRIAL FOR A JUVENILE

In order to answer the basic constitutional question presented in this case and in the *McKiever* case, it first must be determined whether the meaning and scope of the due process to be applied in an adjudication of juvenile delinquency is to be arrived at through a selective absorption of rights specified in the Bill of Rights or through the full scale incorporation of those rights as part of the guarantees afforded by the Fourteenth Amendment. The *amicus* maintains: (1) that the due process requirements that must be observed in an adjudication of juvenile delinquency should be determined through a process of selective absorption of the rights contained in the Bill of Rights according to a standard that will assure "fundamental fairness" to the juvenile; (2) that, so interpreted and applied, due process does not require a jury trial in juvenile court proceedings; and (3) that, in addition, the serious adverse practical consequences that will follow if a jury trial is required in juvenile court proceedings argue strongly against the imposition of a jury trial requirement.

A. *Fundamental Fairness Is the Applicable Standard.* The petitioners in this case and those in the companion *McKiever* case take their stand essentially on the basis of four decisions of this Court. The first is *In Re Gault*, 387 U.S. 1 (1967). The other three are *Duncan v. Louisiana*, 391 U.S. 145 (1968), *Bloom v. Illinois*, 391 U.S. 194 (1968), and *In Re Winship*, 397 U.S. 358 (1970). Whatever the petitioners can make of these four decisions, they have one undisputed common denominator. In each, this Court arrived at a result favorable to the defendant by the selective absorption of certain rights guaranteed by the Bill of Rights to the particular case at hand, finding in each instance that the denial of the particular right would be a departure from "fundamental fairness". That analysis, this *amicus* contends, is precisely the one which the Court should follow in decid-

ing whether the Sixth Amendment, as applied against state action by the Fourteenth Amendment, requires a jury trial in adjudicatory hearings conducted by the juvenile courts of the various states.

On the other hand, petitioners argue that the Fourteenth amendment requires the right to a jury trial in any juvenile court adjudication carrying the threat of a serious deprivation of liberty. Their argument here proceeds from a rather simplistic view of the Court's recent decisions determining the fundamental requirements of due process in juvenile court adjudications and determining, with respect to criminal proceedings carrying the threat of serious deprivations of liberty, that the Fourteenth Amendment includes the Sixth Amendment's jury trial guarantee. Basically, the argument is that the Court has determined in *Gault* and *Winship* that juvenile court adjudications are subject to the standards of the due process clause, and the Court has determined as well in *Duncan* and *Bloom* that the due process clause guarantees a jury trial in state criminal proceedings, and, therefore, the right to a jury trial must apply to juvenile adjudications.

The basic flaw in petitioners' argument is that, while the Court in *Gault* rejected the rigid concept that juvenile court adjudications are civil and therefore free from any due process limitations applied in criminal proceedings, the Court also rejected, both in *Gault* and *Winship*, any procrustean application of all of the due process requirements in criminal proceedings to juvenile court adjudications. Rather, the Court made clear in *Winship* that its decision in *Gault* imposed upon juvenile court adjudications only the "essentials of due process and fair treatment" and not that "the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding . . . ." 397 U.S., at 359. Indeed, the Court in *Winship* specifically rejected the position of the dissent that its *Winship* opinion adopted the premise that juvenile court adjudications may be equated fully with "criminal prosecutions . . . ." *Id.*, at n. 1.

The position of this Court in the constitutional domestication of the juvenile court adjudications simply has not proceeded upon the kind of broad brush approach suggested by the petitioners, and the Council here urges only that the Court continue the approach followed in *Gault* and in *Winship*—a searching evaluation of those procedural safeguards applied in criminal proceedings that are at the very heart of assuring fundamental fairness in adjudications carrying the threat of serious loss of liberty, viewed in light of the effect of the imposition of those safeguards upon the recognized advantages of the distinctive methods of adjudication long followed in juvenile courts. Application of that approach here, we contend, leads to the conclusion that the right of jury trial is not constitutionally required in juvenile court adjudications, nor does it carry advantages outweighing its adverse effect upon the goal of expeditious and comparatively informal adjudication of juvenile delinquency.

The Council has no quarrel now, nor did it at the time that the cases were before this Court, with the results in *Gault* and *Winship*. But it requires no denigration of the values implicit in trial by jury to say, as we show below, that that right does not occupy the same critical role in assuring fundamental fairness as do those secured in *Gault* and *Winship*. Those rights—notice of charges, assistance of counsel, cross-examination, the privilege against self-incrimination, and proof beyond a reasonable doubt—unquestionably are essential to protect against the arbitrariness that always can—though we suggest it rarely does—infect adjudications of juvenile delinquency. Those rights admittedly were accorded petitioners here, however (see Petitioners' Brief, at 15), and the importance of trial by jury must, we contend, be determined in the context of juvenile court adjudications that are now subject to all of the safeguards imposed by *Gault* and *Winship*.

Further, the Court emphasized in both *Gault* and *Winship* not only that many unique aspects of juvenile court adjudications were valuable but also that the procedural safeguards

imposed in those cases would not inhibit that value. Thus, in *Winship*, the Court pointed out that the requirement of a reasonable doubt standard would have no "effect on the informality, flexibility, or speed of the hearing at which the factfinding takes place." 397 U.S., at 366. Again, the Council has no quarrel with that judgment. To be sure, the requirements imposed in *Gault* and *Winship* have required substantial changes in juvenile court procedures in some jurisdictions, but those changes have imposed no critical inhibitions upon the goal of expeditious and flexible adjudications. This case, however, involves a vastly different requirement from the standpoint of orderly administration of the juvenile courts, as we show later in this brief.

In Re Gault, supra, is the landmark case, of course. That decision, as Dean Paulsen put it, has brought about the "constitutional domestication of the juvenile court."[5] However, on any fair reading, *Gault* must be taken as holding that the only constitutional rights required to be observed in juvenile court proceedings are those that are considered to be fundamental to the achievement of fairness to the juvenile. To be sure, concern has been expressed by some courts[6] and commentators[7] that *Gault* implied that all the constitutional protections now applicable to adults in criminal proceedings must be applied automatically and totally in juvenile court proceedings. To the Council, however, such anxiety does not appear well founded. Nothing in the language of Mr. Justice Fortas, writing for the Court in *Gault*, suggests any intention of this Court to transform the

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[5]Paulsen, *The Constitutional Domestication of the Juvenile Court*, The Supreme Court Review 233 (1967)

[6]*DeBacker v. Brainard*, 183 Neb. 461, 161 N.W.2d 508, 513 (1968), *app. dism. on other grounds*, 396 U.S. 28 (1969); *Nieves v. United States*, 280 F. Supp. 994, 1000 (S.D. N.Y., 1968).

[7]Rosenheim, *Standards for Juvenile and Family Courts: Old Wine in a New Bottle*, 1 Family L.Q. 25, 28 (1967); Wheeler and Cottrell, Juvenile Delinquency: Its Prevention and Control 33 (1966); Note, *Gault in Indiana*, 43 Ind. L.J. 661, 667 (1968).

juvenile court into another criminal court, bound by all of the adjudicatory procedures of a criminal court. To the contrary, reiterating his view in *Kent v. United States*, 385 U.S. 541, 562 (1966), Mr. Justice Fortas said in *Gault*:

> "We do not mean . . . to indicate that the hearing to be had must conform with all the requirements of a criminal trial or even of the usual administrative hearing, but we do hold that the hearing must measure up to the essentials of due process and fair treatment." 387 U.S., at 30.

Other language in *Gault* confirms the conclusion that the decision discloses no reasonable basis for the sweeping view that this Court intended to fasten on juvenile court proceedings all the procedural standards required by the Fourteenth Amendment in criminal proceedings. For example, the Court pointed out that the due process standard to be observed is to be "intelligently and not ruthlessly administered." 387 U.S., at 21. Nor did the Court suggest in *Gault* that the adversary system in full panoply was now to be required in the juvenile court. It said only that due process requirements "in contested cases will introduce *some* elements of the adversary [proceedings] . . . ." (Emphasis supplied). 387 U.S., at 27. And the Court observed that "nothing will require that the conception of the kindly juvenile judge be replaced by its opposite, . . ." *Ibid.*[8]

Indeed, with one exception, the rights which *Gault* established for juveniles charged with delinquency are the same that any litigant would enjoy, by virtue of the requirements of due process, in most types of civil proceedings and hearings before administrative agencies exercising quasi-judicial powers, as well; *i.e.*, (1) the right to adequate notice; (2) the right to confront and cross-examine witnesses; (3) the right to remain silent; and (4) the right to counsel, including the right to court-appointed counsel if the juvenile

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[8]For the same understanding of the implications in the *Gault* decision, see *Commonwealth v. Johnson*, 211 Pa. Super. 62, 234 A.2d 9, 15-16 (1967).

or his parents are indigent. It is only the last right that, as yet, has not been extensively provided for in civil and administrative hearings. Too plainly for argument, the minimum standards of fair procedure required for hearings in civil cases should also apply to hearings in a juvenile court.

It could be logically argued that constitutional decision making might be simpler if the "spacious language"[9] of the Due Process Clause of the Fourteenth Amendment were construed to embrace all of the rights contained in the Bill of Rights. However, this Court has never followed such a course of adjudication with respect to adults charged with crimes. It should not now undertake to do so with respect to juveniles similarly charged. In its most recent ruling touching upon the constitutional prerequisites that must be observed in juvenile court proceedings, it deliberately eschewed such an approach. In its decision last Term in *In Re Winship*, 397 U.S. 358 (1970), this Court held that proof beyond reasonable doubt is required by the Due Process Clause, both in criminal trials and in adjudications of juvenile delinquency, because such a requirement is among the "essentials of due process and fair treatment" to be afforded both the cirminally accused and the youth charged with delinquency.[10]

This Court's rejection, in *Gault*, of an uncritical and mechanical application of the Bill of Rights in juvenile court

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[9]*Duncan v. Louisiana*, 391 U.S. 145, 148 (1968).

[10]Unsurprisingly, this approach, even more than the result arrived at, produced a dissent by Mr. Justice Black, who for nearly a quarter of a century consistently, but unsuccessfully, has argued against pursuit of the "selective incorporation" theory of the Bill of Rights, maintaining that only the express proscriptions or implied commands of the Bill of Rights can be invoked to strike down the actions of a legislative body, federal or state. Compare Mr. Justice Black's dissenting opinion in *Winship*, 397 U.S., at 377-386, with Mr. Justice Harlan's concurring opinion in the case, 397 U.S., at 368-376.

proceedings has been approved by both critics[11] and supporters[12] of the juvenile court system. The state courts also, including the Arizona Supreme Court, whose opinion in *Gault* was reversed by this Court,[13] have espoused a similar view. The North Carolina and Pennsylvania Supreme Courts, from which this case and the *McKiever* case have come to this Court, also have adopted the same understanding of how the Bill of Rights is to be applied to juvenile court proceedings.[14] In such a view, the critical issue is what affords fairness to the juvenile, not what are the precise rights to which an adult can lay constitutional claim in criminal proceedings.[15]

The Council is of the same view that Mr. Justice Harlan first expressed in his separate opinion in *Gault* and repeated in his concurring opinion in *In Re Winship, supra, i.e.*, that "there is no automatic congruence between the procedural requirements imposed by due process in a criminal case and those imposed by due process in juvenile cases." 397 U.S., at 375. Further, the Council is of the opinion that this criterion of distinct and independent fairness to the juvenile in determining what his constitutional rights are has been developed and maintained for sound reasons. We need not accept the lazy logic of labels to recognize, as this Court did in *Gault, supra* at 22, and in *Winship, supra*, at 366-67, that criminal proceedings and juvenile court proceedings are distinguishable in ways that should be maintained. The

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[11] Dorsen and Rezneck, *In Re Gault and the Future of Juvenile Law*, 1 Family L.Q. 1, 3 (1967); Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. Law Review 547, 550 (1957); Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, The Supreme Court Review 167, 186 (1966).

[12] Rosenheim, *Standards for Juvenile and Family Courts, supra;* Wheeler and Cottrell, Juvenile Delinquency, note 7, *supra.*

[13] *Application of Gault*, 99 Ariz. 181, 407 P.2d 760 (1965).

[14] 169 S.E.2d at 887; 234 A.2d at 15-16.

[15] *In Re State in Interest of Carlo*, 48 N.J. 224, 225 A.2d 110, 116 (1966); and see cases cited *In Re Gault, supra* at 12, fn. 8.

basic supporting justification for that distinction between the two is the understanding that there is a rational basis for procedural differences between juveniles charged with a violation of law and their adult counterparts. It goes without saying that juveniles are of an age when the enticements of crime are most alluring, yet when their sense of right and wrong is at its peak and when their susceptibility to reform is the greatest.

Nor has this Court been oblivious to the fact that a child's immaturity may serve as a basis, if necessary for his protection, for the state not to afford him the same scope or quantum of constitutional freedom that an adult otherwise might enjoy. As Mr. Justice Frankfurter once put it:

> "Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to a determination of a state's duty towards children."[16]

For example, the Court has sanctioned restriction by the legislature of a child's free exercise of religion rights, *Prince v. Massachusetts*, 321 U.S. 158, 170 (1943), and his rights to free speech, *Ginsberg v. New York*, 390 U.S. 629, 638 (1968), when reasonably necessary for the protection of his own unavoidable condition of immaturity. Do a child's Due Process rights occupy a higher plane than his First Amendment freedoms?

To be sure, some critics of juvenile court procedure have argued that: "Juveniles have an intense perception of fairness; and children are familiar nowadays from an earlier age with fair trial notions of jury trial and reasonable doubt;" and, therefore, to "deny them this right will work against their rehabilitation which can only be built upon their belief that they have been treated fairly."[17] Mr. Justice Fortas apparently paid some heed to this notion in his opinion in

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[16] *May v. Anderson*, 345 U.S. 528 at 536 (1953).

[17] *Crime in the National Capital*, Hearings on S. 2981 Before the Committee on the District of Columbia, United States Senate, 91st Cong., 1st Sess. (1969), p. 1866.

Gault. See 387 U.S., at 26. On the other hand, the sociological and psychological findings which hold to the contrary are those which, in part, gave birth to, and still justify, the less formalistic procedural functioning of the juvenile court. That court system, as it has evolved, has been characterized by Dean Francis Allen as "the most important and ambitious effort yet undertaken by our law to give practical expression to the rehabilitative ideal."[18]

Moreover, more recent scientific findings in the field of ethology tend to confirm that the sociologists, lawyers and other reformers of the early 19th century who conceived and created the juvenile court system were on the right track in separating the juvenile from his adult criminal counterpart. The leading writers in this relatively new scientific field agree that one of the greatest mistakes in child rearing may have been the assumption that aggression, including unsocial behavior, on the part of a child is only a response to frsutration and that a child must be indulged-indeed treated as a little adult-for his own ultimate sound development. Lorenz, On Aggression 47 (1969); Storr, Human Aggression 44 (1968); Morris, The Naked Ape 126-28 (1967); Ardrey, The Territorial Imperative 20-21 (1966). The recent works of these writers have seriously discredited the behavioristic-environmentalistic theories of the nature of man, including the rearing of the young, that have been in vogue for half a century. They would surely find amusing but unfounded the notion that, unless society and the law provide a juvenile with identical procedural treatment to that afforded an adult, he might be permanently marred, so far as his future social adjustment as a human being is concerned.

The applicability of a particular constitutional right in the juvenile court, when invoked under the mandate of due process, should be tested by its relevance to the standard of fairness to the juvenile within the total context of the juvenile court's quest for the rehabilitative ideal. Judged in

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[18] Allen, The Borderland of Criminal Justice 48 (1964).

that light, *amicus* contends, for the reasons now stated, that the right to trial by jury is not so fundamental to a system of ordered liberty that it must be observed in a juvenile court proceeding.

B. *Due Process Does Not Require a Jury Trial for a Juvenile Charged with Delinquency.* The critical issue in determining whether due process requires the application of the Sixth Amendment's right to a jury trial in juvenile court proceedings is whether that right is so fundamental that a proceeding conducted in its absence must be said to be intrinsically unfair. To this the petitioners offer a syllogistic, but unpersuasive, answer. First, they point out that this Court's decisions in *Duncan v. Louisiana* and *Bloom v. Illinois, supra*, establish that the Sixth Amendment, as made applicable to the States by the Fourteenth Amendment, requires a jury trial in any serious criminal case, subsequently found by the Court to be any case where the maximum penalty to which the defendant might be exposed is in excess of imprisonment for six months. *Baldwin v. New York*, 38 U.S. Law Week 4554, June 22, 1970. Accordingly, petitioners say, since the offenses on which the adjudication of delinquency was based in both this case and *McKiever* would expose the juveniles to possible confinement for a period in excess of six months, they necessarily had a constitutional right to a jury trial before they could be adjudicated delinquents. Further, the petitioners argue, the Court's even more recent decision in *In Re Winship, supra*, holding the reasonable doubt standard of proof to be required by due process both in criminal proceedings and in juvenile court proceedings, also supports the claim of a jury trial right which they assert in this litigation.

Amicus turns to these cases. It is perhaps *Duncan* that is most critical. There, Mr. Justice White, writing for the Court, spoke not of fundamental fairness in the abstract but of such fairness according to the meaning "the American scheme of justice" concretely ascribes to it. The Court there granted that "[a] criminal process which was fair and

equitable but used no juries is easy to imagine," but continued that "no American State has undertaken to construct such a system." 391 U.S., at 150, n. 14. At a later point in the opinion, the Court again emphasized that the "strong support" which the jury trial right in criminal causes had received in the laws of every state was very pertinent in determining whether it was fundamental in the American system of justice. *Id.*, at 154.[19]

The same constitutional approach was followed by Mr. Justice Brennan, writing for the Court in *In Re Winship*, *supra*, in concluding that the Due Process Clause requires proof beyond a reasonable doubt both in criminal trials and at the adjudicatory stage of a juvenile court proceeding when a juvenile is charged with an act that would constitute a serious crime if committed by an adult. In reaching that conclusion, the Court first considered history, noting that the "requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation." Next, it noted the "virtually unanimous adherence to the reasonable doubt standard in common law jurisdictions", observing that while that adherence "may not conclusively establish it as a requirement of due process, such adherence does 'reflect the profound judgment about the way in which the law should be enforced and justice administered' [citing *Duncan v. Louisiana* at 155]". The Court's opinion in *Winship* then reviewed the "many opinions of this Court [which] indicate that it has been assumed that proof of a criminal charge

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[19] As he did in *Gault*, and again in *Winship*, Mr. Justice Black, while concurring in the result reached in *Duncan v. Louisiana*, was careful to preserve his opposition to the selective incorporation theory on which the Court proceeded and on which the majority opinion rested in *Duncan*. However, he did concede that the selective incorporation doctrine "does limit the Supreme Court in the Fourteenth Amendment field to specific Bill of Rights protections only and keeps judges from roaming at will in their notions of what policies outside the Bill of Rights are desirable and what are not." 391 U.S., at 145.

beyond a reasonable doubt is constitutionally required." 397 U.S., at 362. Next, it referred to the vital role which the reasonable doubt standard plays "in the American scheme of criminal procedure . . . where it is a prime instrument for reducing the risks of convictions resting on factual error . . . [and] in truth is the standard [which] provides concrete substance for the presumption of innocence", that bedrock principle which lies at the foundation of the administration of American criminal law. 397 U.S., at 358. Going on to find that the "same considerations that demand extreme caution in fact finding to protect the innocent adult apply as well to the innocent child", 397 U.S., at 365, the Court then held that the same standard of proof must be observed in the juvenile court as in the adult criminal court. However, it was careful to discount that the imposition of the reasonable doubt standard in juvenile proceedings would have "any effect on the informality, flexibility, or speed of the hearing at which the fact finding takes place." 397 U.S., at 366.[20]

The Council does not disagree with either the results or the rationale on which those results were reached in *Duncan* and in *Winship*. However, it is clear from both of those decisions, and before, that due process must take into account the practices found suitable by the deliberate process of legislative and judicial action throughout the States. On that analysis, the juvenile court, as now conducted in more than two-thirds of the States, cannot be found wanting in due process by proceeding without a jury trial.

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[20]In his concurring opinion, Mr. Justice Harlan emphasized his view that the requirement of proof beyond a reasonable doubt "does not (1) interfere with the worthy goal of rehabilitating the juvenile, (2) make any significant difference in the extent to which a youth is stigmatized as a 'criminal' because he has been found to be a delinquent, or (3) burden the juvenile courts with a procedural requirement that will make juvenile adjudications significantly more time consuming or rigid. Today's decision simply requires a juvenile judge to be more confident in his belief that the youth did the act with which he has been charged." 397 U.S., at 375.

From the inception of the juvenile court systems in the States, provision for a jury trial right in the juvenile court statute, either expressly or impliedly, has been rare, and use of that right, where provided, has been even more unusual, at least prior to *Gault*. A study of the statutes and judicial opinions indicates that 34 states at present clearly and definitively deny the juvenile a right to a jury trial in cases such as this.[21] Some 12 other jurisdictions (including, until recently, the District of Columbia) grant that right, but then only upon demand. Senate Hearings, note 17, *supra* at 1835.[22] Of the remaining five states, it is very probable

[21] By statute in: Ala. Code Tit. 13, Sec. 369 (1969); Alaska Stat. 47.10.070 (1968 Supp.); Ariz. Rev. Stat. Ann., Sec. 8-229 (1956); Ark. Stat. Ann., Sec. 45-206 (1964 Repl.); Del. Code Ann. Tit. 10, Sec. 1175 (1966 Supp.); Fla. Stat. Ann. 39.09(2) (1961); Ga. Code Ann., Sec. 24-2420 (1959); Hawaii Rev. Stat., Sec. 571-41; Gen. Laws Idaho Ann., Sec. 16-1813; Ind. Ann. Stat., Sec. 9-3215 (1967 Burns' Supp.); Iowa Code Ann. 232.27 (1969 Supp.); Ky. Rev. Stat., Sec. 208.060 (1962); La. Rev. Stat. Ann., Sec. 13:1579 (1968); Minn. Stat. Ann., Sec. 260.155(1) (1967 Supp.); Miss. Code Ann., Sec. 7185-08 (1942); Vernon's Ann. Mo. Stat., Sec. 211.171(6) (equity practice controls); Neb. Rev. Stat., Sec. 43-206.03(2) (1943); Nev. Rev. Stat., Sec. 62.190(3) (1963); N.J. Stat. Ann. 2A:4-35 (1963); McKinney's Consol. Laws N.Y., Family Court Act 164, 165 and Civ. Prac. Law and Rules 4101; N.D. Century Code, Sec. 27-16-18 (1967 Supp.); Page's Ohio Rev. Code Ann., Sec. 2151.35 (1968 Repl.); Ore. Rev. Stat., Sec. 419.498(1) (1967 Supp.); Purdon's Pa. Stat. Ann., Tit. 11, Sec. 247 (1954); Code S.C. Laws, Sec. 15.1095.19 (1968 Supp.); Utah Code Ann., Sec. 55-10-94 (1967 Supp.); Vt. Stat. Ann., Tit. 33, Sec. 651(a) (1968 Supp.); Rev. Code Wash. Ann., Sec. 13.04.030.

By judicial decisions in: Calif.: *In Re Daedler*, 194 Cal. 320, 228 P. 467 (1924); Conn.: *Cinque v. Boyd*, 99 Conn. 70, 121 A. 678 (1923); Md.: *In Re Fletcher*, 251 Md. 520, 248 A.2d 364 (1968); Mass.: *Comm. v. Page*, 339 Mass. 313, 316, 159 N.E.2d 82, 85 (1959) (*dictum*); *Marsden v. Comm.*, 352 Mass. 564, 227 N.E.2d 1, 2 (1967) (*dictum*); N.C.: *In Re Watson*, 157 N.C. 340, 72 S.E. 1049 (1911); *State v. Burnett*, 179 N.C. 735, 102 S.E. 711 (1920); N.H.: *In Re Perham*, 104 N.H. 276, 184 A.2d 449 (1962).

[22] By statute in: Colo. Rev. Stat. Ann. 22-8(1); Kan. Stat. Ann. 38-808 (1968 Supp.) but here the Juvenile Court merely refers the issues to another tribunal for a jury trial and then it is returned for

that four would not grant a jury trial if the question were directly raised for decision.[23] Admittedly, the customs and usages of even a substantial number of States should not be of controlling weight when great constitutional rights are at stake. Nevertheless, they are extremely relevant to determination of the instant issue. As Mr. Justice Clark once said,

> "The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' "[24]

Thus, so far as state practices are concerned, and unlike the situation in *Duncan v. Louisiana* and in *In Re Winship, supra*, the existence of a jury trial right in juvenile court proceedings has received limited acceptance only in a dis-

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disposition to the Juvenile Court; Mich. Stat. Ann., Sec. 27.3178 (598.17); Rev. Codes Mont., Sec. 10-603 (1947); Okla. Stat. Ann., Tit. 10, Sec. 1110; S.D. Code (1939), Sec. 43.0331 (but only the court may order a jury of six); Vernon's Ann. Rev. Tex. Stat., Art. 2338-1, Sec. 13(b); W.Va. Code Ann., Sec. 49-5-6; Wis. Stat. Ann., Sec. 48.25(2) (1957); Wyo. Stat. Ann., Sec. 14-108(c) (1961); 16 D.C. Code 2307 (1967).

By judicial decision in: *Peyton v. Nord*, 78 N.M. 717, 437 P.2d 716 (1968).

[23]In Virginia, *amicus* is advised that the current practice opposes a jury trial. See, in general, Code Va. Ann., Sec. 16.1-162 (1950). In Maine, the statute stipulates an informal juvenile court hearing. Me. Rev. Stat. Ann., Sec. 15-2610. In Illinois, the earliest act provided for a jury but the latest revision makes no mention of the matter. In Tennessee the earlier right to a jury trial statute was repealed in 1955 and its replacement does not mention the issue. In Tennessee the earlier right to a jury trial statute was repealed in 1955 and its replacement does not mention the right. Tenn. Code Ann., Sec. 37-244. Finally, in Rhode Island, the most recent statutory amendment has replaced the direct prohibition of a jury with silence. Gen. Laws R.I., Sec. 14-1-30 (1967 Supp.).

[24]*Leland v. Oregon*, 343 U.S. 790, 798 (1952).

tinct minority of the States. And the District of Columbia, whose statute formerly provided for it,[25] has seen the recent repeal of the right through the action of the Congress in enacting the District of Columbia Crime Bill, P. L. No. 91-358, 91st Cong., 2d Sess., approved July 29, 1970.[26]

The right to a jury trial in juvenile courts has been denied both by legislative action and by appellate decisions in cases contesting the legislative mandate.[27] Moreover, the opinions of the scholars, with only a rarely encountered dissent,[28] oppose the incorporation of the jury trial into juvenile court proceedings.[29] The Standard Juvenile Court Act[30] and the Uniform Act[31] do not provide for it. The recent Minnesota Juvenile Court Rules have not adopted it.[32] Nor was it viewed with approbation by the Task Force Report on Juvenile Delinquency and Youth Crime of the President's Commission on Law Enforcement and the Administration of Justice.[33] Similarly, the recent guidelines

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[25] 16 D.C. Code 2307 (1967).

[26] *Washington Post*, July 30, 1970, p. A-1.

[27] See, *e.g.*, *Estes v. Hopp*, 73 Wash.2d 272, 438 P.2d 205 (1968); *Comm. v. Johnson*, 211 Pa. Super. 62, 237 A.2d 9 (1967). *Contra*: *Peyton v. Nord*, 78 N.M. 717, 437 P.2d 716 (1968).

[28] Antieau, *Constitutional Rights in Juvenile Courts*, 46 Cornell L.Q. 387, 400-01 (1961). But Professor Antieau bases his judgment, in part, on an erroneous finding that "the legislatures in almost half the states" provide for a jury trial in juvenile court matters; Dorsen and Rezneck, supra at 22-23. Note, *Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal*, 114 U. Pa. L. Rev. 1171, 1187 (1966).

[29] Tappan, Juvenile Delinquency 211-12 (1949); Sheridan, Standards for Juvenile and Family Courts 73 (1966).

[30] Section 19 (6th Ed. 1959).

[31] Uniform Juvenile Court Act, Section 24(a) (Nat'l. Conf. Comm. on Uniform State Laws, 1968).

[32] Minn. Juvenile Court Rules, Minn. Stat. Ann. Supp. 1969, foll. Chap. 260 (1969).

[33] P. 38.

promulgated by the United States Department of Health, Education and Welfare reject the requirement of a jury trial as both unnecessary and undesirable.[34] The Council believes it worthy of note that both the sponsors of the Uniform Act and HEW, while opposing a jury trial right for a juvenile, did urge the adoption of the reasonable doubt standard prior to the Court's decision in *Winship*. 397 U.S., at 361, n. 3.

Even the 11 remaining jurisdictions which permit a jury trial in juvenile matters make no convincing case that fundamental fairness requires a jury trial in the juvenile court. An example provided by the Harvard Law Review note, which the majority opinion in *Gault* cited with some frequency, is the Denver experience. There, only two requests for jury trials were made during a 25 year period and both requests were withdrawn before the trial.[35] It is only fair to note, however, that the number of demands for jury trials increased perceptibly, at least in the District of Columbia, following this Court's decision in *Gault*, which, for the first time, guaranteed a juvenile the right to be represented by counsel either engaged by his parents or appointed by the court in the event they were indigent. In the District of Columbia three jury trials were held between 1964 and 1966, 11 jury trials in 1967 and 32 in 1968.[36] However, at the hearings on the District of Columbia Crime Bill, the Department of Justice reported that at "the end of fiscal 1969 there were 290 juvenile court cases awaiting jury trial in the D. C. Juvenile Court."[37] The change in statistics furnishes

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[34] Sheridan, Standards for Juvenile and Family Courts, U.S. Dept. of Health, Education and Welfare 73 (1966); see also Senate Hearings, note 17, *supra* at 1835-36.

[35] Note, *Juvenile Delinquents: The Police, State Courts and Individualized Justice*, 79 Harv. L. R. 775, 794 (1966).

[36] Annual Report of the Juvenile Court of the District of Columbia, Fiscal Year 1968, p. 9.

[37] Senate Hearings, note 17, *supra* at 1804.

no argument in support of the proposition that fundamental fairness requires a jury trial. Yet it does suggest, however, that if the jury trial right is fastened on the juvenile court system, lawyers will not hesitate to invoke it with ever-increasing frequency.[38]

There is, then, no case which can be made for requiring the jury trial in juvenile court proceedings on the basis either of tradition or of its widespread use in the juvenile court systems of the various States. Likewise, the proposition cannot be bolstered—in contrast to the case for the use of the reasonable doubt standard—by any argument that it is required as "a prime instrument for reducing the risk of convictions resting on fundamental error" and preserving "the presumption of innocence." *In Re Winship, supra* at 363. Indeed, as a result of the *Winship* case, juvenile court judges now must apply the reasonable doubt standard in any adjudication of delinquency in the future. The injection of a jury trial requirement would neither make nor mar that duty of the juvenile court judge. It was partially for that very reason that the Congress repealed the jury trial requirement for the District of Columbia. As the Senate report stated:

> "The Senate District Committee has concluded, again, that, inasmuch as the bill as reported provides a sufficiently high standard of proof for fact-finding, the option of trial to a jury is both unnecessary and ill-advised. It is readily apparent that trial to a jury is the least expeditious means of fact-

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[38] Also illustrative of the impact of the *Gault* requirement that lawyers must be provided in juvenile court cases is the report which the National Council on Crime and Delinquency has received from the Juvenile Court in Denver where, as noted supra, p. 25, jury trials formerly were very rarely requested, but where in the first four months of 1970 requests for jury trials were made in 54 of 58 pending delinquency petitions. Letter from Judge Ted Rubin, Judge, Juvenile Court, Denver, Colorado, to the Associate Counsel, National Council on Crime and Delinquency, May 12, 1970.

finding. At the same time, the therapeutic need for expedition is especially great in a system devoted to impressionable juveniles; and expedition is indeed especially important in a system purported oriented in its entirety to therapy or treatment."[39]

Moreover, whatever its failures have been, the juvenile court system was in the beginning and remains now a unique system of individualized justice whose purpose "is remedial and to a degree preventive rather than punitive."[40] Putting all labels aside, the juvenile court system, like American administrative law, is something different from what existed before. Its origins are not on the criminal side; nor can its proceedings be characterized merely as "civil". And while the founders of the juvenile court may have found precedents for what they created in chancery cases, juvenile courts were not derived from the English Courts of Chancery.[41] They were and remain special statutory courts having jurisdiction over certain causes and as such have their own procedure adapted to the type of case heard.[42] Thus, the juvenile court system, like administrative law, is *sui generis*, finding analogies for the procedures it observes in other areas of the law, but maintaining its own unique nature specially fashioned in order to achieve the particular purposes for which it was created. Could it be seriously maintained, for example, that the failures or injustices occurring in the fact-finding procedures of federal and state administrative tribunals exercising important quasi-judicial powers justify imposing upon them the traditional factfinding prerequisites of the common law system? It is no more persuasive to urge that failures of the juvenile court system, due mainly to the lack of public and private resolve in providing the support

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[39]Senate Report No. 91-620, 91st Cong., 1st Sess., December 18, 1969, p. 13.

[40]Standards for Juvenile and Family Courts, *supra*, 1 (1966).

[41]Pound, Interpretations of Legal History 135 (1923).

[42]Note 40, *supra* at 71.

and in approving the funds necessary to implement that resolve, require constitutional changes in the factfinding prerequisites to be observed in that court.

Finally, before transferring the jury system *in toto* to the juvenile court, some consideration should be given to the relative merits of jurors, as opposed to judges, as instruments of fair and effective factfinding. Rhetoric aside,[43] it is still possible to define the concrete bases asserted to justify the existence of the jury trial as an essential component of the American system of justice. It is said to be effective as a factfinding mechanism.[44] However, the recent University of Chicago jury trial study shows that judges and juries agree on the proper disposition of criminal cases in 75.4% of the cases studied.[45] This pattern of agreement is strong evidence that juries are not significantly better equipped to find the facts than judges are. The same point has been made by some state courts in rejecting the constitutional necessity for a jury trial in juvenile courts.[46]

It has also been argued that the right to a jury trial "was clearly intended to protect the accused from oppression by the Government. . . ."[47] Yet past intentions should be read in the light of current realities. Or as Mr. Chief Justice Burger has said:

> ". . . a government bent on destroying individual liberties can do it with a jury or with a non-jury inquiry system. You can juggle any system if you've got enough power in the establishment to do it."[48]

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[43]For one of the stronger criticisms of our traditional jury system, see Frank, Courts on Trial 32 (1949).

[44]Dorsen and Rezneck, *supra* at 23.

[45]Kalven and Zeisel, The American Jury 56 (1966).

[46]*Dryden v. Comm.*, 4 Cr. L. Rep. 2253 (Ky. Ct. App., 1968).

[47]*Singer v. United States*, 380 U.S. 24, 31 (1965); *Duncan v. Louisiana, supra* at 155.

[48]1 The Center Magazine 7, November 1968.

Juries have, it has been said, a virtue in that they may "afford a higher justice by refusing to enforce harsh laws. . . ."[49] Still, the jury that is flexible or non-rule minded enough, or not sufficiently cognizant of its oath, to acquit in one case may in a later case convict on whimsy, too.[50]

Then again, juries are said to be a buffer against the "overworked judge"[51] who will give a case the assembly line treatment, or "as a protection against jaded judges who hear case after case, day in and day out and decide on past prejudices rather than present evidence."[52] Such generalities are more epigrammatic than informative. Whereas some juvenile judges are bound to be insensitive, others are equally certain to be compassionate and experienced. The experience of trying cases is not always a debilitating influence upon good and conscientious judges. It may also awaken in them responses and sympathies which no amount of theorizing would loose. In any event, any seasoned trial attorney knows that juries quickly become jaded, too. Witness, for example, the jockeying with the criminal trial calendar on the part of defense counsel in order to avoid the adverse impact of a trial before a jury soured by one month's experience in court. Or as Kalven and Zeisel have put it,

> "Somehow the combination of official role, tradition, discipline, and repeated experience with the task make of the judge one kind of decider. The perennial amateur, layman jury cannot be so quickly domesticated to official role and tradition; it remains accessible to stimuli which the judge will exclude."[53]

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[49]*Duncan v. Louisiana, supra* at 187 (Harlan, J. and Stewart, J. dissenting).

[50]Kalven and Zeisel, *supra* at 9.

[51]Dorsen and Rezneck, *supra* at 23.

[52]*Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal, supra* at 1187.

[53]Kalven and Zeisel, note 45, *supra* at 498.

In recognition of this sometimes heated and almost never empirically valid debate, where hyperbole abounds, over the merits of the jury system, it would be anomalous to import the jury trial wholesale into the juvenile court on the theory that it is so fundamental to our way of justice as to be imperative in the juvenile court as elsewhere. Whatever the stature of the jury trial in criminal causes, this *amicus* maintains that its desirability in other proceedings is sufficiently debatable to preclude accepting its status as a fundamental necessity required by due process in juvenile court proceedings.

C. *Imposition of a Jury Trial Requirement Would Carry Adverse Practical Consequences for the Efficient Operation of the Juvenile Court System.* As argued, neither fundamental fairness, any continuing national tradition nor universal practices observed in the States can be summoned to support the existence of a constitutional right to a jury trial in the juvenile court. Beyond these pertinent considerations, however, the practical consequences that would ensue if such a jury trial is to be required furnish an additional strong deterrent to requiring such a drastic change in the proceedings of the Nation's juvenile courts.

First, if the jury trial is injected into the juvenile court system as a matter of right, along with it unfortunately will come the traditional delay, formality and inevitable "clash and clamor"[54] of adversary proceedings with which adult jury trials are so frequently permeated. The Congress very recently indicated its awareness of these unfortunate accouterments of a jury trial imposed on juvenile court proceedings when it eliminated the "cumbersome and *inappropriate* trial by jury" formerly required by statute in the District of Columbia. (Emphasis supplied).[55] Noting the

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[54] *Dryden v. Comm.*, note 46, *supra.*

[55] Senate Report No. 91-620, note 39, *supra* at 1.

"delay in juvenile proceedings [which] operates to the detriment both of the community and of the child", the Senate District Committee recommended, and the Congress approved, abolition of the jury trial in the District of Columbia Juvenile Court as the backlog of jury cases in that court edged past the 300 mark.[56] The Senate conferees on the District Crime Bill, reporting back to the Senate after the Conference Committee had reached agreement in recommending approval of the legislation, made the practical argument against the juvenile jury trial in strong terms, saying:

> "Pursuant to the conference report on S. 2601, jury trials are no longer to be allowed in juvenile proceedings; however, the standard of proof for purposes of factfinding in delinquency proceedings is raised from by a preponderance of the evidence to beyond a reasonable doubt. In the view of the conferees, the reasonable doubt standard renders jury trial unnecessary as protection against judicial predisposition. Equally important, again in the view of the conferees, the jury has no function to exercise as a buffer of broad community judgment between the accused and some prescribed statutory punishment (that is, a specific range of penalties), since under the juvenile code there are no prescribed punishments, as such; disposition, treatment, in juvenile proceedings uniquely lies, and in theory is intended to lie, within the sole discretion of the judge. In the view of the conferees, any benefit lost in the elimination of jury trials is more than offset by the gain in expedition essential in juvenile cases. It is the case, furthermore, that jury trials may prove unnecessarily traumatic for the immature persons, children, in the juvenile system. Also, a peculiar need for expertise in factfinding may arise in juvenile proceedings as the testimony of juvenile parties and wit-

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[56] *Ibid.* at p. 6; Senate Hearings, note 17, *supra* at 1804.

nesses must be assessed from the often unusual juvenile perspective.[57]

Indeed, both friends and foes of proposals to cut back some of the procedural protections enjoyed by the criminally accused agree on one point—that is, the extended delays which now occur between a criminal charge and the final disposition of that charge, at least in a great majority of the larger urban jurisdictions of the Country, are an abomination, unfair to many defendants and frequently gravely harmful to the peace and security of law-abiding citizens. Beyond dispute, the jury trial requirement is a partial, but substantial, contributing factor to such delay. Do we really wish to import the jury trial and its propensity for invidious delay into the juvenile court system, a system which, if it is to work at all, must set in motion at the earliest possible moment whatever special facilities and techniques it may have for the counselling, treatment, rehabilitation and reform of a troubled child?

The Council believes that the answer to the not-so-rhetorical question posed immediately above is obvious. Others, however, purport to read a contrary message in this Court's opinions in *Gault and Winship, supra,* where procedural rights required in adult criminal proceedings were held to be constitutional prerequisites for juvenile court adjudications. The *amicus* will not repeat the analysis of those two decisions which it made earlier in this brief. It is sufficient to say that as to *Gault* the minimal procedural rights which the Court required in that decision are basic and fundamental, not only in criminal, but also in a great majority of civil and administrative, proceedings. Indeed, they are the *sine qua non* of any fair adversarial hearing within the meaning of the Anglo-Saxon tradition. But the procedural evils at the cure of which *Gault* was directed are not affected by substituting a jury of laymen for an experienced juvenile

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[57] Statement of the Managers on the Part of the Senate Regarding Conference Action on S. 2601, Committee Print, 91st Cong., 2d Sess., July 15, 1970, p. 19.

court judge. This is especially true now that this Court has determined that the factfinder in a juvenile court proceeding must apply the reasonable doubt standard rather than the preponderance of evidence standard of proof.

Nor, as we have attempted to show, does the Court's decision in *Winship, supra,* argue in favor of the result sought by the petitioners here and the appellants in *McKiever.* As previously stated, Mr. Justice Brennan, speaking for the Court in *Winship,* was careful to point out that the reasonable doubt standard would not have "any effect on the informality, flexibility or speed of the hearing at which the factfinding takes place." 397 U.S. at 366. We suggest that no one rationally can make that statement with respect to the imposition of the jury trial requirement in juvenile court proceedings.

Apart from the delay factor which, by itself, should deter the Court from requiring a jury trial in juvenile court proceedings, there are other significant practical considerations which argue against its imposition. For one, a jury trial in the juvenile court, by replacing the judge as the finder of fact, will require substantial alteration of the traditional practice observed in that court. As he becomes of necessity a referee in a contest between the state and one of its juvenile citizens, and deprived of the power of being the final arbiter of fact, the juvenile court judge will have to concern himself much more with the technicalities of procedure, with the consequently reduced capacity to guide and mold the hearings. Hearsay evidence, for example, now admissible in judge-conducted delinquency adjudications would probably have to be excluded where a jury sits in judgment in the juvenile court.

Secondly, there is the matter of the "public trial" required by the Sixth Amendment to the Constitution of the United States. Even today, among those 11 States which provide opportunity for a jury trial in juvenile court, only four permit open or public hearings, and even in these four there are provisions for closing the hearing when felt neces-

sary in the discretion of the court. Senate Hearings, note 17, *supra* at 1835. The Council has grave doubts that anyone in this day of the widest possible news coverage by the communications media can point to any salutary effects—either from the point of view of the juvenile or from that of society—to be achieved by making adjudications of juvenile deliquency public proceedings. Nor is it any answer to the obvious to say that the juvenile can waive his right to a public trial. The very facts of the case at bar show what little control the juvenile has over protecting his privacy when other forces, including less than reticent counsel, are inclined in the other direction. If a juvenile court delinquency hearing is to be made a public matter, this Court truly will have supervised the complete conversion of the juvenile court into a court which, so far as its disposition procedures are concerned, is exactly identical to its adult criminal court counterpart. That result would, in the judgment of the Council, be deplorable.

Then, there is the further concern that the right to a jury trial does not travel without its necessary impedimenta.[58] These may have a constitutional dimension, if the right to jury trial does so. For example, will the jury verdict have to be a unanimous verdict, as suggested by the appellant in *DeStefano v. Woods*, 392 U.S. 631 (1968)? How representative must the jury be? In point of fact can it be representative, since by law in most jurisdictions persons under 21 cannot serve on juries? *Amicus* mentions these troublesome peripheral issues only to emphasize that any declaration that there is a constitutional right to a jury trial in juvenile court proceedings inevitably will introduce other troublesome questions which will put the juvenile court to the test as much as they will this Court.

Finally, there is the necessary formality that inevitably accompanies a jury trial. It may be that the informality of

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[58] *Bloom v. Illinois*, 391 U.S. 195, 213 (1968) (Fortas, J. concurring).

the juvenile court is not an unmixed blessing,[59] but it does have certain positive advantages for the juvenile. It frustrates the urge of the youth for notoriety and attention.[60] It removes some portion of the stigma of criminality,[61] and it softens the impact of charge, trial and disposition upon an impressionable youth.

There may be some doubt, resulting from an empirical void, as to the exact nature of the rapport between judge and juvenile, as to the extent to which a jury trial may have a traumatic effect of any substantial duration upon the juvenile. Yet, it is reasonably clear that "tearing the 'socialized' procedure out of our [juvenile court] system is not a great leap forward . . ."[62] for the juvenile. "For children who are receiving the 'worst' of both worlds, it is no great achievement to brighten the one that may not matter as much to them."[63]

Finally, the juvenile court is not the only quasi-criminal tribunal with the power to institutionalize persons without engaging in a trial by jury. Sex psychopath laws often have the same effect. Mental commitment procedures are well-known and frequently used illustrations of such authority to cause loss of liberty. Even in criminal proceedings, there might well be pre-trial hearings on an issue of the accused's competency to stand trial with a resulting long-term deprivation of liberty. And in the juvenile court, in dependency cases a similar consequence often follows from a jury-less proceeding. A decision in this case requiring a jury trial in

[59]Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 Wis. L. Rev. 7, 19; Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 Colum. L. Rev. 281, 284 (1967).

[60]Tappan, Juvenile Delinquency, *supra* at 146.

[61]Rubin, Crime and Juvenile Delinquency 66 (1958).

[62]Paulsen, *Kent v. United States: The Constitutional Context of Juvenile Cases*, The Supreme Court Review 167, 192 (1966).

[63]Handler, *The Juvenile Court and the Adversary System*, note 59, *supra* at 32.

the juvenile court could have a domino-like effect upon other proceedings which entail confinement and loss of liberty. Such possible consequences should not be discounted in arriving at a conclusion on the merits of the jury trial issue posed in this case.

For all these reasons, the Council urges that the Court not find that due process of law requires the imposition of a jury trial right in juvenile court adjudications of delinquency. However, the Council would like to point out that it is not opposed to state statutes which permit a jury trial in the discretion of the court. Such provisions permit the holding of a jury trial in a serious case where unavoidable prehearing press reports have directed public attention to the case and where the juvenile protests his innocence of the grave act with which he is charged. This, however, is the comparatively rare situation and can be accommodated by statutory provision without imposing the jury trial as a constitutional prerequisite in the other 99% of juvenile court cases.

II.

EQUAL PROTECTION OF THE LAWS IS NOT OFFENDED BY DENYING A JURY TRIAL TO A JUVENILE

The record in this case, as well as that in *McKiever*, does not indicate that the juvenile petitioners expressly asserted in the courts below any constitutional claim that denying them a jury trial constituted a violation of the Equal Protection Clause of the Fourteenth Amendment. Still, the issue is not completely free from doubt. In the prior case of *DeBacker v. Brainard, supra*, which the Court heard in its 1969 Term, several of the Justices inquired of counsel concerning possible equal protection implications if a jury trial is denied a juvenile in a proceeding in which he is charged with delinquency. Accordingly, the *amicus* believes that the equal protection question, whether formally preserved for decision in this litigation or in *McKiever*, merits at least some brief attention.

Respondent North Carolina has cited illustrative instances in which the law does not treat children on an equal footing with adults. Children, the respondent notes, are required to obey their parents, are not allowed to vote, are not allowed to drive automobiles, cannot bind themselves by contract, are not allowed to sit on juries and are required to attend school. All these distinctions in the treatment of children in the law are long established and well accepted. Of course, it might be said that such distinctions are either for the protection of the child or are imposed out of an awareness that the immaturity of youth precludes, at least in the great majority of cases, possession of the necessary wisdom, discretion or maturity of judgment required to permit the juvenile to exercise particular privileges enjoyed by adults, such as, for example, the right to vote or the right to sit on juries. Still, in all these situations it is the condition of being a child and the presumption of immaturity which attaches to that condition which both explains and justifies the difference in the law's treatment of the juvenile as opposed to the adult.[64]

Nevertheless, it might fairly be asked, is that condition a convincing basis for denying a juvenile the alleged protections of a jury trial—a right which an adult enjoys and a right, it might be maintained, which is for the juvenile's protection and the exercise of which is not beyond his wisdom or judgment to invoke intelligently?

There are several answers to the assertion of such an equal protection claim for a juvenile's jury trial right. In part, they are the same answers which the *amicus* has given to the question of whether due process requires affording the juvenile a jury trial right, *viz:* (1) the jury trial right, at least in the overwhelming run of cases, will not confer any significant benefit, but may work some substantial disadvantage, to the juvenile; (2) the entire juvenile court system, including the majority of juveniles who are confronted with charges of

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[64]Young, *The Constitution and the Juvenile Court—Letter or Spirit*, 44 Jour. of the Am. Jud. Soc. 94, 97 (1960).

delinquency, would be adversely affected by the substantial delay introduced into that system if a jury trial is to be required; and (3) even the most fundamental of constitutional rights, including the right to free speech and the free exercise of religion, no less than the right to a jury trial, may be restricted when necessary for the long run protection of children, whatever short-run advantage may be thought to be provided in a particular case by the full grant of such rights to the juvenile.

Thus, in essence, the same reasons which justify the conclusion that denial of a jury trial in a juvenile court proceeding does not deserve censure under the Due Process Clause also serve to prevent its condemnation as a violation of the Equal Protection Clause. At the root of both conclusions is the ancient assumption, overwhelmingly supported by the teachings of psychology, biology, physiology, sociology and ordinary human experience, that a child is not the same as an adult. Therefore, treating him as a child and not as an adult is not unconstitutional, provided that he is treated fairly. Denying him a jury trial is not treating him unfairly, and the difference in such treatment is not one condemned by the Constitution of the United States.

CONCLUSION

For the reasons stated in this brief, the *amicus* urges the Court to affirm the decision of the North Carolina Supreme Court in this case and that of the Pennsylvania Supreme

Court on appeal in *McKiever v. Commonwealth of Pennsylvania*, No. 322.

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In The

Supreme Court of the United States

October Term, 1970

No. 149

IN RE BARBARA BURRUS, et al.,

Petitioners

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE STATE OF NORTH CAROLINA

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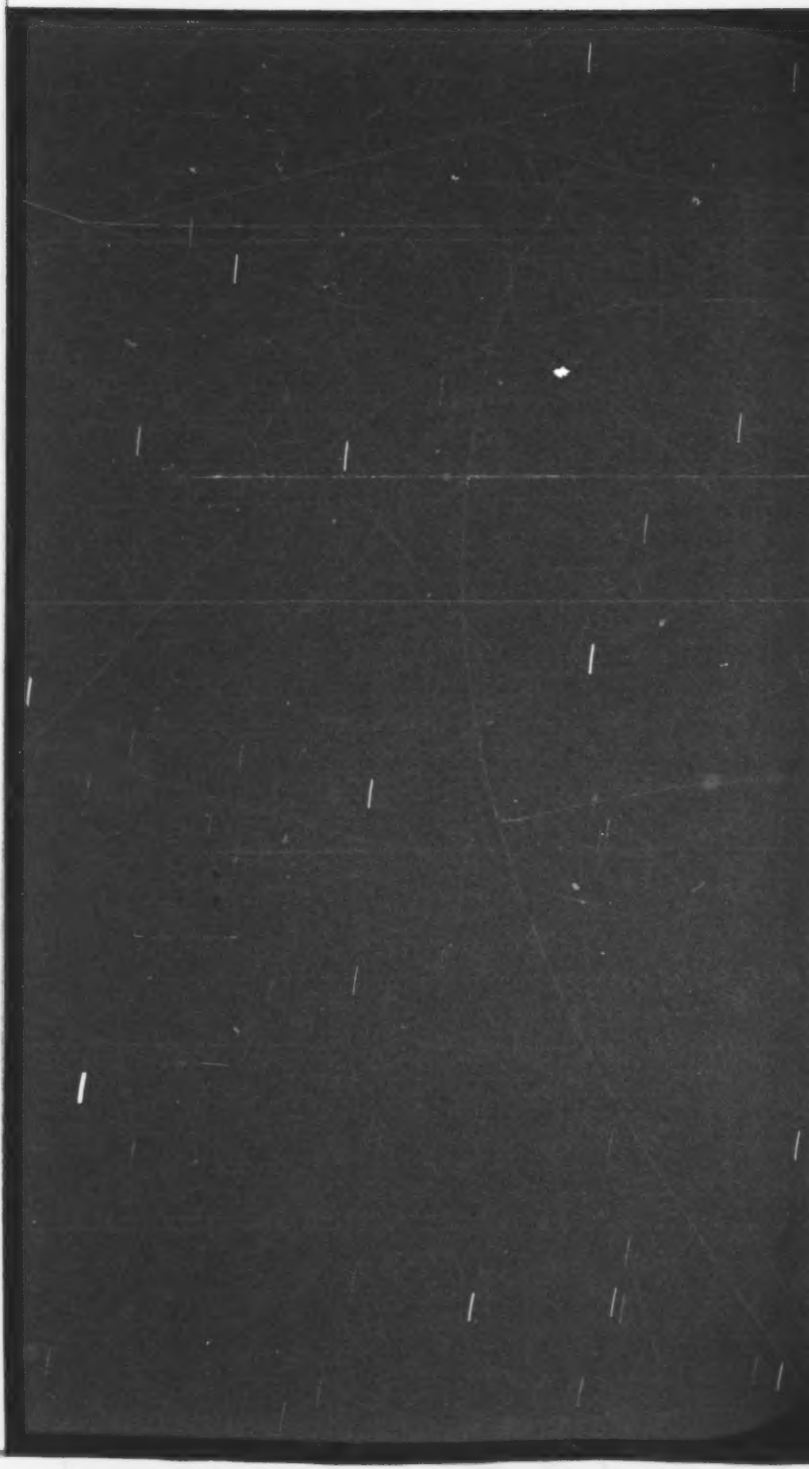

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In The

Supreme Court of the United States

October Term, 1970

No. 128

IN RE BARBARA BURRUS, et al.,

Petitioners

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NORTH CAROLINA

BRIEF
FOR THE STATE OF NORTH CAROLINA

Respondent.

OPINIONS BELOW

The opinion of the Supreme Court of North Carolina is reported at 275 NC 517, 169 SE 2d 879 (A 324-344). The opinion of the North Carolina Court of Appeals in In Re Burrus is reported at 4 NC APP 523, 167 SE 2d 254 (A 303-315); the opinion in In Re Shelton is reported at 5 NC APP 487, 168 SE 2d 695 (A 318-320).

JURISDICTION

The judgment of the Supreme Court of North Carolina was docketed on October 16, 1969 (A 345). Petitioners' Petition for Writ of Certiorari was filed on July 12, 1969, and granted April 20, 1970 (A 346). This case involves the application of the Sixth and Fourteenth Amendments to the Constitution of the United States.

QUESTION PRESENTED

WERE PETITIONERS' RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS VIOLATED WHEN THEY WERE DENIED TRIAL BY JURY, ON THE ISSUE OF THEIR DELINQUENCY IN JUVENILE COURT PROCEEDINGS WHICH COULD HAVE RESULTED IN THEIR INCARCERATION FOR PERIODS OF FROM SIX TO TEN YEARS?

STATEMENT

This case consists of approximately forty-six cases which arose on separate petitions charging each juvenile with one of various wilful and unlawful acts committed on different dates and different occasions in Hyde County, North Carolina. (A 143, 165, 189, 210, 240, 248, 255, 261, 268, 285 and 292) In some instances, more than one petition was filed so that the same juvenile was charged with more than one of the wilful and unlawful acts alleged. (e.g. A 2, 29) Pursuant to these petitions, approximately forty-six juvenile summonses were issued, one for each child and his parents or other person having custody of the child, to appear before the judge of the juvenile court for a hearing on the petition alleging delinquency. Different days for the various hearings were set and the place for the hearings was specified. (A 54-97)

On six diffferent occasions in November and December, 1968, these juveniles (with the exception of James Lambert Howard) were observed by State highway patrolmen standing upon a public highway tossing a basketball back and forth and singing, clapping, and marching. (e.g. A 147, 169, 192) "Between September 11 and November 13 they marched practically every day." (A 195) As a result, vehicular traffic was prevented from proceeding in either direction. The juveniles and numerous adults were asked to remove themselves from the road to allow traffic to pass. They either refused to do so or left the roadway and immediately returned. Said juveniles, with numerous adults who were also participating in the un-

lawful conduct, were then taken into custody. After ascertaining the juveniles herein named to be under sixteen years of age, the officers obtained juvenile petitions. (e.g. 145-147, 168, 170, 192)

On or about December 5, 1968, approximately sixteen persons, including James Lambert Howard, were observed in the principal's office of the O. A. Peay School at 10:30 a.m., while school was in session, yelling, pounding objects against the windows, moving furniture, including a metal cabinet, placing a bed against the door, emptying papers on the floor, turning chairs upside down, and generally littering the office with books, papers, a roll of electrical wire, and other items of property belonging to the school. As a result, the school closed before noon. None of the sixteen were students or school personnel. (A 249-253) A petition was filed against James Lambert Howard for his part in this episode. (A 48)

At the hearings, the cases were consolidated into groups, and the District Judge ordered the general public excluded from the hearing room. The same counsel appeared in all cases for the juveniles. (A 143, 165, 189, 210, 240, 248, 255, 261, 268, 285 and 292). After the hearings, a separate, but almost identical order of custody was entered declaring each child to be a delinquent in need of more suitable guardianship. (A 98-143, 288, 295).

On appeal to the North Carolina Court of Appeals, the cases were lumped into one record. The North Carolina Court of Appeals held that, on the constitutional point which is pertinent to the case as it now stands, a juvenile was not entitled to a jury trial. (A 303, 318) Petitioners thereupon appealed to the North Carolina Supreme Court. (A 300, 316)

On appeal to the North Carolina Supreme Court, it was made to appear that the factual situation in two additional cases, involving juveniles Selma Shelton and John Green Cunningham, were substantially identical to the factual situa-

tion in the case of In Re Burrus, et al, and the North Carolina Supreme Court ordered a consolidation (A 322) and heard all the cases as one appeal. Thereafter, the Court held, that under the Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, §17 of the Constitution of North Carolina, a juvenile was not entitled to a jury trial in a juvenile court proceeding on the issue of his delinquency. However, the Court did modify the District Court's order by striking its commitment provisions on the basis that the judge exceeded his disposal authority. The probationary part of the order was therefore affirmed. (A 323, 324) From that judgment, the petitioners petitioned this Court for a writ of certiorari.

SUMMARY AND INTRODUCTION

Although the *parens patriae* concept of juvenile justice has been criticized and severely limited in its application to the juvenile courts, still, it has residual validity. This residual validity when applied to the adjudicatory stage embraces the rehabilitative possibilities that arise there. One important rehabilitative factor, which is in play at the adjudicatory hearing, is confidentiality.

The juvenile court system as an institution is essential to our society. Hence all three stages of this system should be preserved. It is beyond question, however, that those due process safeguards which are compatible with the system should be integrated into it. But a ruthless application of DUNCAN will destroy it.

Lastly, the Fourteenth Amendment should not strike down a separate juvenile justice system based upon considerations pertinent only to children. The due process standards of the Fourteenth Amendment vary with the subject matter and the necessities of the situation. Thus, when the impact of juries on the juvenile environment is analyzed in depth, it is found that bench trials are more compatible with the juvenile court. Indeed, it is even likely that bench trials may serve the pur-

poses of fundamental fairness more adequately than juries. At any rate, an in-depth analysis reveals that jury trials are just not necessary in this setting. And although a delinquency proceeding may in fact be comparable in seriousness to a felony prosecution from a loss of liberty standpoint, yet there are still legitimate differences between the two prosecutions which the Fourteenth Amendment should reflect. Hence, juvenile due process does not include trial by jury.

ARGUMENT

THE PETITIONERS' RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WERE NOT VIOLATED, WHEN THEY WERE DENIED TRIAL BY JURY ON THE ISSUE OF THEIR DELINQUENCY IN JUVENILE COURT PROCEEDINGS WHICH COULD HAVE RESULTED IN THEIR INCARCERATION FOR PERIODS OF SIX TO TEN YEARS.

At common law there was a conclusive presumption that a child under seven years of age was incapable of committing crime—he was not capable of *mens rea*—and the same presumption existed to the age of fourteen as to minor offenses. PEE v US, 274 F 2d 556, 558 (D.C. Cir. 1959). Between seven and fourteen, and as to graver crimes, there was also a presumption against the ability to commit them; rebuttable, however, on clear and convincing proof that the child possessed the knowledge and discretion requisite for legal accountability. STATE v BURNETT, 179 NC 735, 102 SE 711, 713 (1920). Thus at common law, children above age seven were treated as adults.

> "They were given the same legal protection and the same punishments as adults. This system prevailed, with various modifications, in this country until the early part of the twentieth century. The constitutional guarantees were equally applicable to juvenile offenders and to adults. But then, a tidal wave of reform, put in motion by such persons as Judge Julian Mack and the leaders of the Jane Addams

School, resulted in a national outcry against the resulting barbarism, as it appeared to them to be, of treating children and juveniles the same as adults. So, in all the jurisdictions under the American flag, separate systems of courts and separate sets of principles were devised for juveniles, usually including those up to eighteen years of age." Fortas, *Equal Rights—for whom?* 42 NY UL Rev 401 (1967) at 405-06; and In re JOHNSON, 254 Md 517, 255 A 2d 419, 421 (1969).

THE THEORY OF JUVENILE COURTS

The aim of the adult criminal process is the imposition of stigma and pain for the purposes of punishment, deterrence, or reformation. Paulsen, *KENT v UNITED STATES: The Constitutional Context Of Juvenile Cases,* 1966 Sup Ct Rev 167, 173-174. It may be said, therefore, that the adult criminal system has two characteristics; the proceeding is formal by nature, and punishment is the primary purpose. Rubin and Shaffer, *Constitutional Protections for the Juvenile,* 44 Denver Law Journal 66, 67. These qualities of a criminal prosecution historically gave rise to special procedural protections, some of which are in our Bill of Rights.

Now crime and punishment are not the primary business of the juvenile court system. STATE v TURNER, (Ore) 453 P 2d 910, 913 (1969). Under this system, juvenile status becomes a basis upon which a youthful offender can plead diminished responsibility for his unlawful act. KEMPLEN v MARYLAND, ... F 2d ....., (No. 13, 290, decided May 22, 1970, 4th Cir). Actually, juvenile court jurisdiction confers "special rights and immunities." Indeed, it protects the juvenile against the consequences of an adult conviction such as loss of his civil rights and disqualification for public employment. KENT v US, 383 US 541, 16 L Ed 2d 84, 95, 86 S Ct 1045 (1966).

The juvenile court system is designed to be rehabilitative

at its adjudicatory stage as well as at its other stages, for rehabilitation is the juvenile court's polar star. Hence, the theory that underpins present juvenile court procedure is that publicity with its attendant stigma does not deter juvenile misbehavior but, on the contrary, interferes with the possibility of rehabilitating the offender. It is believed, though it has never been empirically demonstrated, that notoriety tends to scar, rather than to scare, and handicaps a child's prospects for future adjustment and law-abiding behavior. Moreover, it is thought that focusing public attention and disapproval on a juvenile miscreant takes unfair advantage of a youngster who still has not reached the age of complete discretion. In re AGLER, 19 Ohio St 2d 70, 249 NE 2d 808, 810 (1969); and Geis, *Publicity and Juvenile Court Proceedings*, 30 Rocky Mount Law Review 101, 102.

Secrecy in the juvenile court was therefore developed as a device to protect the young individual against exposure to the cruelty of an aroused community while providing rehabilitative measures. If the rehabilitative process was to have any hope of success, secrecy was said to be essential. Polow, *The Juvenile Court: Effective Justice or Benevolent Despotism?*, 53 A.B.A.J. 31, 33.

It cannot be said that protection from stigma is not a legitimate consideration, for it is elementary that our society values a person's good name. As a consequence, in a criminal prosecution the accused has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he will be stigmatized by the conviction. In re WINSHIP, ... US ....., 25 L Ed 2d 368, 375, ... S Ct ..... (1970). Hence, its founders designed the juvenile court system to protect a child from even the accusation of delinquency, on the theory that the state should not damage a child's reputation as a result of his appearance in juvenile court. As to the delinquent child, he too was to be insulated from society's wrath and stigma. In re AGLER, supra.

KENT v UNITED STATES recognizes these benefits of the juvenile system: "shielded from publicity; and protected from the stigma of criminal conviction, etc." *KENT v UNITED STATES: The Context of Juvenile Cases,* 1966 Sup Ct Rev 167. Indeed, the case itself is an illustration of some of the beneficial aspects of the system. KENT v US, Supra, 16 L ed 2d at 84.

Although this Court has proclaimed its distrust of the protective principle, still it has not said that all policy factors embodied in that principle are beyond its consideration.[1] What Gault did was to hold that the Fourteenth Amendment's standards of due process are applicable to juvenile proceedings. However, it did not say that all of the guarantees of the Bill of Rights need necessarily be applicable. Paulsen, *Constitutional Domestication of the Juvenile Court,* 1967 Sup Ct. Rev 233, 246. Like in KENT, specific approval was given to the processing and treatment of juveniles separately from adults; to classifying a juvenile offender as a delinquent rather than charging him as a criminal; to statutory provisions providing that the adjudication of a child as a delinquent shall constitute neither a civil disability nor disqualification for civil service appointment; to provisions intended to keep juvenile records confidential; and to the practice of conducting proceedings in an informal manner. In re GAULT, supra, 18 L ed 2d at 543, 544; In re JOHNSON, supra, 423.

As the Oregon Supreme Court has observed, it would have been simple to strike down the juvenile codes, and return the child to the criminal courts and thereby afford him the full range of constitutional due process which accompanies a criminal trial. STATE v TURNER, supra. But GAULT specifically recognized that, despite its faults, when loosely administered, the *parens patriae* concept has some residual validity, and expressly refrained from a "root and branch" extirpation of the

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1. See In re GAULT, 387 US 1, 24, 18 L Ed 2d 527, 87 S Ct 1428 (1967), and In re WINSHIP, supra, 25 L Ed 2d at 377, where the Court said that the "claim of secrecy . . . is more rhetoric than reality."

separate juvenile system. Thus, there this Court did not discard the juvenile system, but commanded only that it be tempered with certain procedural safeguards. In re GAULT, supra; and COMMONWEALTH v JOHNSON, 211 Pa Super 62, 234 A 2d 9, 16 (1967).

Lastly, In re WINSHIP, 25 L Ed 2d 368, 372, said that Gault

> "decided that, although the Fourteenth Amendment does not require that the hearing at this stage [adjudicatory] conform with *all the requirements of a criminal trial or even the usual administrative proceeding*, the Due Process Clause does require application during the adjudicatory hearing of 'the essentials of due process and fair treatment.'" (Emphasis supplied) (Citations omitted)

It is obvious that the reason the United States Supreme Court after approximately sixty-five years started to cruise into the waters of the juvenile court is that the practice in that court had not conformed to its theory. As to the court's role in these waters, there appears to be little current dissent from the proposition that the due process clause has a role to play in juvenile court. However, the observance of due process standards, intelligently and not ruthlessly administered should be the rule. Such an application of due process standards will not compel the states to abandon nor displace any of the substantive benefits of the juvenile process. In re ESTES v HOPP, 438 P 2d 205; and In re GAULT, supra, 87 S Ct at 1440.

THE JUVENILE COURT AS A SOCIAL INSTITUTION

For a complete understanding of the impact of jury trials on the juvenile milieu, an analysis of that court as a social institution must be attempted. A state treats its children differently from its adults because the state has an interest in the well-being of its youth. Indeed, this Court, among others, has recognized that the state has an interest "to protect the welfare of children" and to see that they are "safeguarded from

abuses which might prevent their 'growth into free and independent well-developed men and citizens.'" Moreover, "the well-being of its children is of course, a subject within the state's constitutional power to regulate. . . ." GINSBERG v NEW YORK, 390 US 629, 20 L Ed 2d 195, 88 S Ct 1274 (1968), reh den, 391 US 971, 20 L Ed 2d 887, 88 S Ct 29.

> "[t]he state's authority over children's activities is broader than over like actions of adults . . . A democratic society rests, for its continuance, upon the healthy, well-rounded growth of its young people into full maturity as citizens, with all that that implies. It may secure this against impeding restraints and dangers within a broad range of selection." PRICE v COMMONWEALTH OF MASS, 321 US 158, 88 L Ed 645, 64 S Ct 438 (1944), reh den, 321 US 804, 88 L Ed 1090, 64 S Ct 784.

Thus, in this case, it is not only the possible loss of liberty and freedom from stigma interests of the child, but the interests of society in the child and the interests of society in its own safety and future which hang in the balance.

Historically, putting aside for the moment the criminal law or even the law of guardianship, protection of children from their immaturity is not a late nineteenth century or even a twentieth century phenomenon. At common law, an infant's contracts except for necessities were voidable. There a person was classified an infant until attaining the age of twenty-one. 42 AM JUR 2d, Infants, §3; 43 CJS, Infants, §2; 2 Williston, Contracts, §223 (3rd ed 1959); Coke on Littleton, 13th ed (1788), p 172; and PERSONNEL CORP v ROGERS, 276 NC 279, 172 SE 2d 19 (1970). Wasn't this voidability of contracts rule for the purpose of protecting a child from the consequences of his own immaturity?

So, children—yesterday, today, and hopefully tomorrow—are not *sui juris*, and are both legally and as a practical matter, unable to take responsibility for their decisions. Moreover, the parents or guardian do not always represent the child's best

s and are sometimes adverse thereto. In re AGLER, 13. Hence, as a practical matter, only the state has a t interest in forwarding a child's best interest.

Justice Fortas capsuled the idea, when addressing the of Columbia Juvenile Practice Institute, he is reported said that the juvenile court as an institution is essential ociety, for he was not sure that there was much con- e that could be done with offenders who are past child- There is thus a nonjudicial function that the juvenile ust perform; but finding out whether a child committed of which he is accused must be accomplished with fair- tcham and Paulsen, *Address to the District of Colum- enile Practice Institute*, 6 Cr L 2173.

North Carolina Statutory scheme provides that the Dis- urt shall have exclusive, original jurisdiction over de- children under the age of sixteen. GS 7A-277; GS 7A- GS 7A-279.[2] It also has jurisdiction of civil as well as matters. It was then, as well as now, the proper court trial of all civil actions in which the amount in con- is $5,000 or less. GS 7A-243. It had then, as now, e, original jurisdiction for the trial of criminal actions, g municipal ordinance violations, below the grade of GS 7A-272.

inquent child is any child who has committed any offense under state law or under an ordinance of local

Carolina has just undergone a reorganization of its court system. his case arose, the District Court, a new addition to the trial was operating in Hyde County. At that time, both the District nd Superior Court exercised exclusive juvenile jurisdiction under 21, et seq.; GS 7A-277. The Superior Court exercised exclusive tion in those areas of the State where the District Courts had not un to operate. Session Laws of 1969, c 911, s 11. The District Court will be established in all areas of this State on the first Monday mber, 1970. GS 7A-131(3). The 1969 Legislature rewrote GS 110-21, and transferred these provisions to Chapter 7A of the General s, effective January 1, 1970. Session Laws of 1969, c 911, s 11. The on herein is founded primarily upon the current law. However, he law as it applies to this case differs from current law, the rovisions of Chapter 110 of the General Statutes will be noted. manner, a full overview of past and present juvenile jurisdiction cedure is sketched.

government, including violation of motor vehicle laws, or a child who has violated his probation condition.[3] GS 7A-278(3).

When a child of fourteen has committed an offense which constitutes a felony, the judge may, after a probable cause hearing and findings that the needs of the child or the best interests of the state will be served, transfer the case to the Superior Court for trial as in the case of adults. If the alleged felony is a capital offense, after finding probable cause, the case must be transferred to the Superior Court for trial as an adult. GS 7A-280; and GS 110-29(6). A case is commenced by petition and service of summons and petition on the interested parties. GS 7A-281; GS 7A-282; GS 7A-283; GS 110-25; and GS 110-28.

The hearing is to be a simple judicial process designed to adjudicate the issue of delinquency and the judge shall find the facts. A written record of the hearing is maintained. The court is to protect a party's right of written notice, to counsel, to cross examine witnesses, and his privilege of self-incrimination. Also a party has the right to introduce evidence.[4] GS 7A-285.

Juvenile hearings are held at such times and places as the chief district judge[5] shall designate, and at the court's discretion the general public may be excluded from the hearing. GS 7A-285. At the conclusion of the adjudicatory part of the

3. GS 110-21(1) defined a delinquent child as one who violated any municipal or State law or ordinance, and GS 110-21.1 gave the court jurisdiction over violations of the motor vehicle laws.

4. GS 110-29 provided for a summary hearing.

5. The chief district judge, according to present and past practice, has administrative supervision and authority over the operation of the District Courts in his district. His power includes that of arranging schedules and assigning district judges for sessions of district courts. GS 7A-146(1). The practical effect of this provision is to allow some specialization in juvenile court matters. Hence, one judge oftentimes specializes in juvenile cases. In the larger district court districts where there are three or more judgeships, GS 7A-147 allows specialized judgeships. This was also true when the case arose. Hence, the District Court is a trial court of general jurisdiction which allows some judgeship specialization. Petitioners' sketch of the system as applicable to this case is, therefore, somewhat inaccurate regards judgeship specialization.

hearing, the court may proceed to the dispositional part of the hearing which may be informal. In all cases the court's order shall be in writing and shall contain appropriate findings of fact.[6] GS 7A-285. Any child or his representative may appeal from a District Court adjudication to the North Carolina Court of Appeals. GS 7A-289; and GS 7A-35.

Now where the court finds that a child should be detained in secure custody for the community's protection or in the best interests of the child, before or after a hearing on the merits, the child may be detained in a juvenile detention home or, if no home is available, in a separate part of the local jail which meets the standards of a home. The child cannot be held there more than five days without a hearing on the merits, and after such hearing, only in accordance with a written court order.[7] GS 7A-286 (3); and GS 110-30.

After a delinquency adjudication, in appropriate cases, the judge may commit the child to the care of the North Carolina Board of Juvenile Correction. The commitment is to be for an indefinite term, but not beyond the eighteenth birthday of the child as the Board or its administrative personnel may find to be in the child's best interest. However, if the child is engaged in a vocational training program when he becomes eighteen, the Board may extend the indefinite term beyond the eighteenth birthday until the training program is complete.[8] GS 7A-286 (4) (c).

In the adjudicatory stage, if no parent appears with a child, or where the court finds it is in the child's best interests, the court may appoint a guardian of the person who shall continue during the minority of the child. GS 7A-286 (6); and GS 110-37. Lastly, juvenile records are not open to public inspection, and may be examined only by order of the judge except where the

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6. No such provisions appeared in GS 110-29.

7. GS 110-30 is not so elaborate, providing only for a separate lockup.

8. GS 110-29(4) provided only for commitment to a suitable institution.

child, his parents, guardian, custodian and attorney, or other authorized representative of the child shall have a right to examine the child's juvenile record. Moreover, an adjudication of delinquency will not disqualify the child from public office nor be considered as a conviction of any criminal offense. GS 7A-287; and GS 110-24.

SPECIFIC CONTENTION OF THE STATE OF NORTH CAROLINA

The State of North Carolina respectfully contends that the above-outlined statutory schemes adequately promote reliable fact finding. believe that a fair fact-finding procedure in juvenile court is necessary, but we do not believe that the rehabilitative goals of the juvenile system should be compromised in the process. Indeed, constitutional rights need not always be given effect through the same mechanisms which are employed in the criminal courts. We believe the alternative procedure of a bench trial which furthers the rehabilitative goals of the system is justified and constitutional—assuring due process and fundamental fairness in this setting. We believe that the institution of the juvenile court and the individual rights of the juvenile are both so important, that only by this Court's holding juvenile bench trials constitutional can a reasonable reconciliation of the two interests be reached. This we will now attempt to demonstrate.

THE FOURTEENTH AMENDMENT

DUNCAN v LOUISIANA, 391 US 145, 20 L Ed 2d 491, 88 S Ct 1444 (1968), reh. den. 392 US 947, 20 L Ed 2d 1412, 88 S Ct 2270, held that the due process clause of the Fourteenth Amendment guarantees a right to a jury trial in all non-petty criminal cases. BALDWIN v NEW YORK, 38 Law Week 4554 (1970), held that a potential sentence in excess of six months takes an offense out of the petty category. Hence, a broad reading of the term "criminal" would make DUNCAN applicable to the juvenile setting. However,

it is universally held that delinquency proceedings in juvenile court are not criminal. PEE v US, supra, 561. Moreover, most jurisdictions hold that in the absence of a statute which provides for jury trial, an individual charged with being a delinquent has no right under the pertinent state or federal Constitution to demand a jury trial, for most jurisdictions hold that trial by jury applies only to the trial of a criminal action, penal in nature. This is especially so where the investigation is into the status and needs of the child and is aimed at the rehabilitation and restoration of the offender to useful citizenship.[9]

In GAULT, the Court refused to characterize the proceedings as either civil or criminal. The first footnote in WINSHIP said that opinion did not rest on the assumption that all juvenile proceedings were criminal prosecutions. In re WINSHIP, supra, 25 L Ed 2d 372. To hold juvenile court cases criminal would only trade the "civil" label of convenience, criticized in GAULT, for a similar "criminal" label in talismanic substitution of reason.[10] The very purpose of the juvenile code is to avoid treatment of youngsters as criminals and to insulate them from the reputation and answerability of criminals. In re AGLER, supra, 814.

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9. See the Marshalling of Authorities on this point in Anno: Right To Jury Trial In Juvenile Court Delinquency Proceedings, 100 ALR 2d 1241.

10. If juvenile proceedings are labeled "criminal" for purposes of jury trial and DUNCAN ruthlessly applied, strange results may follow. For example, in North Carolina, our Constitution denies an accused the privilege of jury waiver. N. C. Const., Art. I, §13; and STATE v HOLT, 90 NC 749 (1884). Some state courts rule that in the absence of a statute there can be no waiver of jury trial. See, e.g., WILSON v STATE, 16 Ark 601 (1855); STATE v MAINE, 27 Conn 281 (1858); PEOPLE v SMITH, 9 Mich 193 (1861). Other states hold that the waiver of jury trials can be prohibited by statute. See, e.g., ARNOLD v NEBRASKA, 38 Neb 752, 57 NW 378 (1894); In re McQUOWN, 19 Okla 347, 91 P 689 (1907); STATE v BATTEY, 32 R.I. 475, 80 A 10 (1911); STATE v HIRSCH, 91 Vt 330, 100 A 877 (1917); MAYS v. COMMONWEALTH, 82 Va 550 (1886). Many courts hold that waiver is permissible, even in the absence of enabling legislation. See, e.g., State ex rel WARNER v BAER, 103 Ohio St 585 (1921); Ex Parte KING, 42 Okla Cr 46, 274 P 682 (Okla Crim App 1929). Of course, this Court has held that a state statute permitting waiver of a jury trial in criminal cases does not violate the Due Process Clause of the 14th Amendment. HOLLINGER v DAVIS, 146 US 413, 36 L Ed 986, 13 S Ct 105 (1892); and see SINGER v US, 380 US 24, 13 L Ed 2d 630, 636, 85 S Ct 783 (1965).

Hence, the consideration becomes in what manner does due process affect juvenile courts. The answer appears in KENT and GAULT.

> "We do not mean . . . to indicate that the hearing to be held must conform with all of the *requirements of a criminal trial or even of the usual administrative hearing;* but we do hold that the hearing must measure up to the essentials of due process and fair treatment." (Emphasis supplied) KENT v US, supra, 16 L Ed 2d at 97; and In re GAULT, supra, 18 L Ed 2d 548.

Thus, the constitutional safeguards vouchsafed a juvenile in such proceedings should be determined from the requirements of due process and fair treatment, and not by a strict application of the clauses of the Constitution, which in terms apply to criminal cases. PEE v US, supra, and BIBLE v STATE, (Ind) 254 NE 2d 319 (1970). This is in accord with Mr. Justice Holmes, who writing in MOYER v PEABODY, 212 US 78, 53 L Ed 410, 29 S Ct 235 (1909), said:

> "But it is familiar that what is due process of law depends on circumstances. It varies with the subject matter and the necessities of the situation. Thus, summary proceedings suffice for taxes, and executive decisions for exclusion from the country."

In summary, a specific constitutional provision may not be fundamental to a fair trial under all circumstances. Due process of law is a standard which a specific constitutional provision may, depending upon the circumstances, add to, be a part of, or define. In re WINSHIP, supra, 25 L Ed 2d at 380 (concurring opinion); and MURRAY'S LESSEE v HOBOKEN LAND AND IMPROV CO, 18 How 272, 15 L Ed 372 (1855).

In military tribunals, jury trials are not required. WHELCHEL v McDONALD, 340 US 122, 127, 95 L Ed 141, 145, 71 S Ct 146 (1950) (dictum), reh den 340 US 923, 95 L Ed

666, 71 S Ct 356; and KAHN v ANDERSON, 255 US 1, 8, 9, 65 L Ed 469, 474, 475, 41 S Ct. 224 (1921). Likewise, there it is held "[d]ue process of law means that every person brought to justice before a military court martial or commission is entitled to a fair trial, characterized by procedures that are all consistent with our notions of fundamental fairness." US v McMAHON, 6 USCMA 709, 723, 21 CMR 31 (1956). Additionally, one need look no further than equity jurisdiction to determine that trial by jury, guaranteed by the federal and most state constitutions, is not an essential element of due process in all adjudicatory proceedings. It is beyond cavil that an equity decree can be intensively coercive. In re AGLER, supra, 814.

Moreover, the mere fact that a proceeding may result in the deprivation of liberty should not in and of itself compel the conclusion that the proceeding is criminal in nature or like unto criminal proceedings for the purposes of the Sixth Amendment right to jury trial. Under federal law, after only a court hearing, individuals charged with the commission of a crime can be placed in the custody of the Attorney General until found mentally competent to stand trial. GREENWOOD v US, 350 US 366, 100 L Ed 412, 76 S Ct 410 (1956). And although certain state proceedings akin to lunacy proceedings, which result in the deprivation of liberty without the procedural safeguards have been found constitutional [MINN ex rel PEARSON v PROBATE COURT, 309 US 270, 84 L Ed 746, 60 S Ct 523 (1940)] still there is no definite ruling at this time that the due process clause requires juries in either federal or state involuntary commitment proceedings for mental illness or alcoholism. BARRY v HALL, 68 App DC 350, 98 F 2d 222 (1938).

The pivotal question is then: which rules of fairness and basic procedural rights are necessary for due process and fundamental fairness in the juvenile setting? The framing of the question in this manner calls forth a selective due process

standard applicable only to juvenile proceedings. Such a standard allows the extrapolation from KENT, GAULT, and WINSHIP, that jury trials are not necessary for due process and fair treatment in juvenile courts.

The equal protection clause should not invalidate a juvenile court system founded upon bench trials. What this clause appears to require is that any classification of "persons" shall be reasonably relevant to some recognized purpose of good government. "A statute does not violate the equal protection clause merely because it is not all-embracing . . . And it is not open to objection unless the classification is so lacking in any adequate or reasonable basis as to preclude the assumption that it was made in the exercise of the legislative judgment and discretion." WHITNEY v CALIFORNIA, 247 US 357, 71 L Ed 1095, 1103, 47 S Ct 641 (1927). Moreover, one who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. WHITNEY v CALIFORNIA, supra. Thus, the Equal Protection Clause doe not require absolute equality. BREEDLOVE v SUTTLES, 302 US 277, 82 L Ed 252, 58 S Ct 205 (1937). But when a law is passed pursuant to a valid state interest the law will be upheld only if it is necessary and not merely rationally related to the accomplishment of a permissible state policy. McLAUGHLIN v FLORIDA, 379 US 184, 13 L Ed 2d 222, 231, 85 S Ct 283 (1964).

Since it is indisputable that there are legitimate differences between the needs of juveniles and those of adults which should be recognized, the Fourteenth Amendment's application to juvenile hearings should thus reflect these differences.

PRESENT DAY LEGAL AUTHORITIES

A majority of the jurisdictions which have reviewed this question since KENT or GAULT support the view that jury trials are not necessary in the juvenile setting. The cases are: COMMONWEALTH v JOHNSON, 211 Pa Super 62, 234 A

2d 9 (1967); DRYDEN v COMMONWEALTH, 435 SW 2d 457 (Ct App, Ky) (1968); PEOPLE v "Y.O. 2404," 57 Misc 2d 30, 291 NYS 2d 510 (1968); PEOPLE v ANONYMOUS, 56 Misc 2d 725, 289 NYS 2d 782 (1968); In re ESTES v HOPP, 73 Wash 2d 263, 438 P 2d 205 (1968); PEOPLE v K, 58 Misc 2d 526, 296 NYS 2d 404 (1968); In re JOHNSON, 254 Md 517, 255 A 2d 419 (1969); In re STATE OF N. J. in the interest of J. W., 106 NJ Super 129, 254 A 2d 334 (1969); In re BURRUS, 4 NC APP 523, 167 SE 2d 254; and 275 NC 517, 169 SE 2d 879 (1969); STATE v TURNER, (Ore) 453 P 2d 910 (1969); In re ALGER, 19 Ohio St 2d 70, 249 NE 2d 808 (1969); BIBLE v STATE, (Ind) 254 NE 2d 319 (1970); In re TERRY, (Pa) 265 A 2d 350 (1970); and In re FUCINI, (Ill) 255 NE 2d 380 (1970).

A smaller body of case law holds that in the light of GAULT a juvenile is entitled to trial by jury. PEYTON v NORD, 78 NM 717, 437 P 2d 716 (1968); DeBACKER v BRAINARD, 183 Nev 461, 161 NW 2d 508 (1968); NIEVES v US, 280 F Supp 994 (S.D.N.Y.) (1968); SAUNDERS v LUPIANO, 30 AD 2d 803, 292 NYS 2d 44 (1968); and PEOPLE v DAY, 61 Misc 2d 786, 306 NYS 2d 610 (1969)

Eleven jurisdictions provide some form of jury trial by statute. They are: Colo Rev Stat Ann §37-8-3 (1964); DC Code Encyclopedia §16-2307 (1961); Kan Gen Stat Ann §38-808 (Supp 1967); Mich Comp Laws Ann Ch 712 A 17 (1968); Mont Rev Codes Ann §10-604.1 (Supp 1969); Okla Stat Ann Tit 10, §1110 (Supp 1968); SD Comp Laws Ann 26-8-31 (1967); Tex Rev Civ Stat Ann, art 2338-1, §13(b) (Vernon Supp 1968); W Va Code Ann §49-5-6 (1966); Wis Stat Ann §48.25 (2) (1957); and Wyo Stat Ann §14-108 (c) (1961).

Other miscellaneous authorities which have taken the position that jury trials in juvenile proceedings are not necessary or desirable are: Standard Juvenile Court Act, art v, §19 (6th ed); Uniform Juvenile Court Act, §24(a) (1968);

US Dept of Health, Education, and Welfare, Children's Bureau, *Standards for Juvenile and Family Courts* 73 (1966); and The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: *Juvenile Delinquency and Youth Crime*, 38 (1967).

FUNDAMENTAL FAIRNESS

A balancing of equities should reveal what is fundamental fairness in the juvenile setting. A proper balancing should combine the best aspects of the juvenile and criminal procedures into an amalgam which will offer the juvenile the best of both worlds. Only through such a weighing, where the necessity and appropriateness of each constitutional procedural safeguard is weighed, can the introduction of safeguards into the juvenile milieu be reconciled with the original rationale for the independence of the juvenile court.

Constitutionally this approach is sound because balancing, has in the past, played a part in the application of the due process clause:

> "Decisions of this Court concerning the application of the Due Process Clause reveal the necessary process of balancing relevant and conflicting factors in the judicial application of that clause . . . Decisions under the Due Process Clause require close and perceptive inquiry into fundamental principles of our society. The Anglo-American system of law is based not upon transcendental revelation but upon the conscience of society ascertained as best it may be by a tribunal disciplined for the task and environed by the best safeguards for disinterestedness and detachment." BARTKUS v ILLINOIS, 359 US 121, 3 L Ed 2d 684, 79 S Ct 676, 689-690 (1959).

A ruthless application of DUNCAN and BLOOM v ILLINOIS, 391 US 194, 20 L Ed 2d 522, 88 S Ct 1477 (1968), as contended for by the petitioners would exclude the "necessary process of balancing relevant and conflicting factors."

GARRITY v NEW JERSEY, 385 US 493, 17 L Ed 2d 562, 87 S Ct 616 (1967), and GRIFFIN v CALIFORNIA, 380 US 609, 14 L Ed 2d 106, 85 S Ct 1229 (1965), reh den 381 US 957, 14 L Ed 2d 730, 85 S Ct 1797, are said to lay a balancing approach to due process to rest. NIEVES v US, 280 F Supp 994, 1002 (1968). However, those cases deal with the Fifth Amendment's self-incrimination provision, as applied to criminal trials. In contrast, Juvenile Cases are not strictly criminal, and an absolute application of all Bill of Rights' provisions are therefore not necessary. PEE v US, supra. Remember ". . . What is due process of law depends on circumstances." MOYER v PEABODY, supra.

Indeed, doesn't GAULT illustrate the proposition that, in this setting, each constitutional safeguard should be examined to determine if in its absence arbitrary governmental power is possible. It appears, therefore, that as to children, certain constitutional rights are necessary to preserve a minimum degree of procedural fairness, while others are necessary only in varying degrees, or not at all. In re GAULT, supra, 18 L ed 2d 527.

What then is to be balanced? In our constitutional universe, liberty is the rule and restraint the exception. ADKINS v CHILDREN'S HOSP, 261 US 525, 526, 67 L Ed 525, 43 S Ct 394 (1923). Such a maxim demands that special justification be adduced in support of any inroad upon freedom of action. Under the rule of balancing, the court, therefore, balances the apparent detriments of the statute from the point of view of liberty against the anticipated benefit from the point of view of public policy.

> "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation . . . '[D]ue process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place, and circumstances.' It is 'com-

pounded of history, reason, the past course of decisions . . . ' JOINT ANTI-FASCIST REFUGEE COMMITTEE v McGRATH, 341 US 123, 162, 163, 95 L Ed 817, 848, 849, 71 S Ct 624 (Concurring opinion).

"As these and other cases make clear, consideration of what procedures due process may require under any given set of circumstances begin with the determination of the precise nature of the governmental function involved as well as of the private interest that has been affected by governmental action." CAFETERIA WORKERS v McELROY, 367 US 886, 6 L ed 2d 1230, 1236, 81 S Ct 1743 (1961).

Hence, it is this respondent's position that the constitutional balance of social convenience is expressed in this legislation which denies juveniles jury trials. An analysis of jury and bench trials will develop and illustrate the soundness of this contention.

JURY TRIALS

A jury's function may be expressed in two ways: (1) As a guarantor of accuracy in fact finding; and (2) as a political institution which provides the individual a degree of protection against the legislative will and the prosecutor's discretion. "A right to jury trial is granted to criminal defendants in order to prevent oppression by the government . . . Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or over-zealous prosecutor and against the compliant, biased, or eccentric judge." DUNCAN v LOUISIANA, supra, 20 L Ed 2d at 499, 500.

Thus, a jury trial provides the accused with a weapon against political crimes repressive of civil liberties, a weapon juveniles do not generally need. Furthermore, it provides the accused with some protection against punishment which is greater than the community, speaking through the jury, thinks

warranted in a given case.[11] The adjudicatory stage of the juvenile court is not concerned with punishment, but with establishing that a basis exists for the use of state power to care for the child. *Paulsen, Fairness To The Juvenile Offender,* 41 Minn L Rev 547 (1957).

In the final analysis, therefore, it should be the jury's capability as a fact finder which recommends it and not some collateral benefit from its presence. The reason for this is that

> '. . . . the principal original virtue of the jury trial—the limitations a jury imposes on a tyrannous judiciary—has largely disappeared. We no longer live in a medieval or colonial society. Judges enforce laws enacted by democratic decision, not by regal fiat. They are elected by the people or appointed by the people's elected officials, and are responsible not to a distant monarch alone but to reviewing courts, including this one." DUNCAN v LOUISIANA, supra, 20 L Ed 2d at 518 (dissenting opinion).

Certainly, one cannot regard the jury as a better, fairer, more accurate fact finder than a competent and conscientious judge. There may be some judges who do not fit this description, but neither do all juries. DRYDEN v COMMONWEALTH, 435 SW 2d 457 (Ct of App, Ky 1968). Moreover, BRUTON v US, 391 US 123, 20 L Ed 2d 476, 88 S Ct 1620 (1968), is convincing proof that juries cannnot always be trusted. Even DUNCAN acknowledges that trial by jury is not always necessary to insure an impartial trier of fact. DUNCAN v LOUISIANA, supra. Lastly, the right to jury trial is not one of the elements of criminal due process which reformers have pursued adamantly, probably because it does

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11. Mr. Justice Fortas is reported to have said that in juvenile cases there should be no confinement if there is any alternative whatever in a particular case. This, he says, solves the "hocus pocus" of confinement as treatment. Ketcham & Paulsen, *Address to the District of Columbia Juvenile Practice Institute,* 6 Cr L 2173. Clearly, if it is found that judges are adequate due process fact finders, then the possible confinement consideration is not pertinent to the question under debate.

not appear to have any significant correlation to a correct determination of the facts. Ketcham, The Unfilled Promise of the American Juvenile Court, *Justice For The Child* 23 (Rosenheim ed 1962).

Thus, the only thing that can be said is that as applied to juveniles the frequency of difference in decision between a judge and a jury would be relatively insignificant.[12] There is now all the more reason to question whether a jury trial is the most trustworthy instrumentality for protecting the rights of the child, his parents, and the state in a proceeding intended to salvage a child if he is in need of governmental control. STATE v TURNER, 453 P 2d 910, 913.

Moreover, other more important procedural safeguards assure that a miscarriage of justice will not occur. A lawyer promotes effective fact finding. In re GAULT, supra. The reasonable-doubt standard of proof test is a check superior to all others in protecting against an unjust determination of the facts. In re WINSHIP, supra. The compiling of a record, the use of objections and exceptions, written findings of fact and conclusions of law, and the right to appeal, etc.—in general the adversary system—all operate as checks against the judge. Likewise, dismissal, etc. at the intake stage, the right to confront opposing witnesses, including the right of cross examination, the right to have the use of compulsory process in obtaining favorable witnesses, the right of counsel, the right against self-incrimination or the exclusionary rules of evidence, the accused's right to be heard, and the restraints which operate against the judge, all serve as checks on the prosecution.

Finally, delinquency is divided into neither grades nor degrees. Regardless of the nature of the act committed by a child, he comes within the court's jurisdiction. For example, if the delinquency alleged is homicide, there is no scope or

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12. For a short analysis of judge-jury disagreement, see Kalven and Zeisel, *The American Jury*, 55-65 (1966).

cause to decide whether it constitutes first degree murder, second degree murder, or manslaughter. In any event, it is delinquency if the act was committed. The point is that in this environment there just is no need for a sophisticated fact finder. George, *Juvenile Delinquency Proceedings: The Due Process Model*, 40 U Colo Law Review 315, 327.

Although a jury trial would cause the trial to be open, and open trials generally operate as a check upon arbitrary court action, still the advantage would be purchased at the expense of punishing the juvenile through publicity. "In many cases publicity tends itself to constitute a form of punishment, and when it does not, it serves only to provide a deeply troubled youngster an opportunity to flaunt his unregeneracy." The President's Commission On Law Enforcement And Administration Of Justice, Task Force Report: *Juvenile Delinquency And Youth Crime*, 38. Thus, any lack of confidentiality increases the likelihood of permanent stigma, reducing the effectiveness of any treatment administered.

A breach of confidentiality of juvenile trials would not only harm the child, but his family as well. Hence, jury trials in juvenile court should be outweighed by the resultant stigma which handicaps the rehabilitative possibilities. Lest one thinks that stigma as a factor in the equation against juries can be minimized, just how is the judge to control the post adjudicatory speech of jurors. It should, also, be pointed out that studies reveal that the stigma which attaches to the label "delinquent" applies to the dependent and neglected child alike, i.e., to all who come in contact with the juvenile court. California Governor's Special Study Comm'n. on Juvenile Justice Report, pts 1, 11 1960 pp 19-20; and Paulsen, The Delinquency, Neglect and Dependency Jurisdiction of the Juvenile Court, *Justice For The Child*, 45-46 (Rosenheim ed 1962). This revelation portrays the irrationality of public reaction to juvenile court adjudications. If a child is to be protected from such irrational repercussions, he must be protected from a jury.

In the juvenile setting, to require juries would increase the formality of the court. As Dean Paulsen has said: "A jury trial would inevitably bring a good deal more formality to the juvenile court without giving a youngster a demonstratively better fact-finding process than trial before a judge." Paulsen, *Fairness To The Juvenile Offender*, 41 Minn L Rev 547, 559 (1957).

Another problem juries present is that of uniformity in the court. Delinquency other than when a delinquent is charged with some specific criminal act may involve rather ill-defined notions of waywardness and unmanageability (e.g., D.C. Code Encyclopedia, §11-1551), and the maintenance of some semblance of uniform standards among them dictates trial before a jury. In some jurisdictions, for either category of delinquency the juvenile may be committed to an institution. If the jury is applicable to one category, it should be to the others as well, at least insofar as rights are responsive to potential state infringement on the accused's freedom. DRYDEN v COMMONWEALTH, supra.

One of the major problems in treating delinquency today is the so-called "generation gap" between the adults who administer the juvenile justice machinery and the juveniles who are its material.

> "Only a juvenile jury could adequately serve the function of piercing the juvenile front on the one hand and of applying contemporary youthful standards to alleged delinquent conduct on the other. The lay adult judgment is likely to be generally harsher and less understanding than the judgment of adult professionals who have at least some undersanding of the juvenile milieu." George, *Juvenile Delinquency Proceedings: The Due Procen Model*, 40 U Colo Law Review 315, 327.

Thus, jury trials may even impair the fairness of a hearing, because juries may harbor more prejudice toward juveniles

than toward adults. In light of the "generation gap," adult jurors[13] may feel the need to punish rather than to follow the notion of rehabilitation.

Again, the initiation of a jury into the juvenile setting would greatly increase administrative problems, e.g., the selection of and paying of jurors.

> "The jury system can also be said to have some inherent defects . . . It is a cumbersome process, not only imposing great cost in time and money on both the state and the jurors themselves, but also contributing to delay in the machinery of justice." DUNCAN v LOUISIANA, supra, 206 L Ed 2d at 518 (dissenting opinion).

In increasing administrative problems, it would hinder the function of this particular court. It would probably overburden crowded court calendars and prevent a speedy trial. The speed, convenience, and flexibility of the juvenile system would be disminished.[14] In summary, a jury would thus greatly increase administrative and economic problems, lessen the effectivenes of the court, and not particularly enhance procedural fairness. BIBLE v STATE, supra.

THE CONSEQUENCES OF JURY TRIALS

Hence, to afford juveniles the protection of a jury trial "would risk destruction of beneficial aspects of the juvenile process." In re WINSHIP, supra, 20 L Ed 2d at 376. It would mean a retrogression to the ordinary criminal trial. In re GAULT, 387 US at 75 (dissenting opinion).

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13. Since the jury panel must represent the community at large, most jurors, under whatever system they are picked, would probably be adults. GLASSER v US, 315 US 60, 86 L Ed 680, 62 S Ct 457 (1942).

14. Speed, convenience, and flexibility may by themselves be entitled to no weight in the calculus of this Court's past decisions. BALDWIN v NY, supra; FAY v NOIA, 372 US 391, 9 L Ed 2d 837, 83 S Ct 822; and GIDEON v WAINWRIGHT, 372 US 335, 9 L Ed 2d 799, 83 S. Ct 792 (1963). But, when grouped with the other factors herein discussed, they are, in the aggregate, entitled to some weight. In re WINSHIP, 25 L Ed 2d at 376.

> " . . . (T) here is no automatic congruence between the procedural requirements imposed by the process in a criminal case, and those imposed by due process in juvenile cases. It is of great importance, . . . that procedural strictures not be constitutionally imposed that jeopardize 'the essential elements of the state's purpose' in creating juvenile courts."

Jury trials may not interfere with the worthy goal of rehabilitating the juvenile, but they will make a significant difference in the extent to which a juvenile is stigmatized as a "criminal" because he has been found to be a delinquent, and burden the juvenile courts with a procedural requirement which will make juvenile adjudiction significantly more time consuming or rigid. In re WINSHIP, supra, 20 L Ed 2d at 381 (concurring opinion).

> Moreover, . . . "if the adjudication of 'delinquency' must be by a jury with all the procedures of a criminal trial, then certainly many of the immunities granted to minors will have been abolished. Among these, one considered most essential to the welfare of the child and in the interest of society, is that of secrecy. There can be no secrecy with the jury trial. It is obvious . . . that if there must be a fact-finding determination of delinquency by a jury, the first step has been taken in abolishing the difference in concept of treatment between juveniles and adults." PEYTON v NORD, 78 NM 717, 437 P 2d 716, 727 (1968) (concurring and dissenting opinion).

The respondent does not believe this Court will condone such a result, for in WINSHIP it said that the infusion of the reasonable doubt standard would not "compel the states to abandon or displace any of the substantive benefits of the juvenile process." In re WINSHIP, supra.

Hence, this respondent respectfully urges this Court to hold that a juvenile is to be afforded the benefit of an informal hearing at which rules of fairness and basic procedural rights are

observed, and that on balance bench trials are more consistent with the premises of the proceedings. In re AGLER, supra.

BENCH TRIALS

The State of North Carolina does not contend that a juvenile does not have a right to a judge who has no interest in the case, and who has not been prejudiced by earlier events. In re MURCHISON, 349 US 133, 99 L Ed 942, 75 S Ct 623 (1955). The adult system of criminal trials is arranged so that those who pass upon preliminary matters rarely make the final adjudication as well. Due process, therefore, may demand that the trier of fact should not be acquainted with any of the facts of the case or have knowledge of any of the circumstances, either through officials in his own department or records in his possession. Matter of REIS, 7 Cr L 2151 (4-14-70, R.I. Fam Ct.). The State of North Carolina contends that any problems this aspect of due process may present can be solved by some sort of bifurcated hearing without requiring a jury's intervention. This aspect of juvenile bench trials should present no real problem.

In regards to the fundamental fairness of a bench trial, recall that DUNCAN specifically states that it does not question the fairness of trial by judge where a jury is waived. It follows then that when the constitutional right to a jury is waived in criminal proceedings, the procedure which remains must itself be fair. There must therefore be some degree of fairness in trial by a judge. Hence, without proof of judicial partiality, it is this respondent's position that it should not be assumed that bench trials are unfair, or that they do not measure up to the essentials of due process in the juvenile setting. It thus seems wrong to assume that a child cannot receive a fair trial before a juvenile court judge.

The respondent would like to make one other point clear. In GAULT, this Court saw fit to break a juvenile proceeding down into three separate stages, the intake stage, the adjudicatory stage, and the dispositional stage. Now, post-adjudicatory

exposure is an altogether distinguishable problem from adjudicatory exposure and should not be used as a justification for striking down adjudicatory confidentiality. We do not believe that this suit should be used as a vehicle for striking down adjudicatory confidentiality, because of the pre or post-hearing abuses in the juvenile system as a whole. Rather, a suit directly challenging such an invasion of that right to privacy should be the proper vehicle. Moreover, such abuses as occur in the post-hearing stage, or even in the intake stage, can be remedied by legislative acts of expungement, etc., which are made effective. See, for example, Cal. Welfare and Inst'ns Code §781; Ariz Rev Stat Ann §9-2819 (1956); and Mo Stat Ann §211.321 (3) (1962).

CONCLUSION

Finally, respondent contends that the decision in this case should turn upon this Court's answer to the following question: "Whether the presence of the jury in a juvenile case contributes to a significantly substantial reduction in possible margin of error so as to outweigh the possible harm to the child from participation in such a trial, and the disruption of the juvenile system as conceived?" We contend it does not.

The crucial distinction between juvenile loss-of-liberty cases and adult loss-of-liberty cases is that the juvenile law is dealing with a child and not with an adult. The difficult problem, therefore, is whether this Court can give the child all the rights of an indicted adult without at the same time abandoning the the residual validity of the *parens patriae* concept of juvenile justice. The respondent earnestly contends that the difference between a child and an adult justifies constitutionally the present-day difference in fact finders.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 128

IN THE MATTER OF

BARBARA BURRUS ET AL.

PETITIONERS

BRIEF OF THE COMMONWEALTH OF MASSACHUSETTS AS AMICUS CURIAE

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In the
Supreme Court of the United States

OCTOBER TERM, 1970

No. 128

IN THE MATTER OF

BARBARA BURRUS ET AL.

PETITIONERS

BRIEF OF THE COMMONWEALTH OF MASSACHUSETTS AS AMICUS CURIAE

Interest of the Commonwealth As Amicus Curiae

The Commonwealth of Massachusetts in and through the District Attorney's Office in the County of Middlesex, is respondent in a juvenile case on appeal to the Massachusetts Supreme Judicial Court. The case is set down for oral arguments in November, 1970. The case of *Commonwealth* v. *Kelley, et al.*, much like the current Supreme Court case of *In Re Burrus*, cert. granted, 397 U.S. 1036 (1970) involves one single but important question to the Commonwealth of Massachusetts: Does a juvenile offender have a right to a jury trial in his juvenile hearing?

On June 16, 1970 the defendants Arthur H. Thomas, Brian J. Kelley and Robert Owens, truly known as George Kelley, demanded a jury trial in their juvenile hearing.

Their motions were denied. Subsequently, the defendants were found guilty of delinquency by reason of assault and battery with a dangerous weapon, the victim having been shot in the leg by a high powered pellet gun. These juveniles were then committed to the Massachusetts Youth Service Board.

In 1956, the Supreme Judicial Court of Massachusetts laid to rest any suggestion that a juvenile had a right to a jury trial. Rather, the decision in *Commonwealth* v. *Bigwood,* 334 Mass. 46 (1956), emphasized the point that a child does *not* have a right to a jury trial in his juvenile proceedings.

It is for this express reason that the Commonwealth of Massachusetts files this brief Amicus Curiae pursuant to rule 42 (4) of the Rules of The Supreme Court, amended 1967.

Summary of Argument

I. The juvenile defendants charged herein do not have a right to a jury trial within the meaning of the Sixth Amendment to the United States Constitution. The framers of the Constitution and especially the Sixth Amendment intended that the protection to be afforded defendants charged with crime should be that defendants would be "judged by their peers." It is impossible under present day standards for the selection of jurors, that juveniles could ever be "judged by their peers."

II. Juvenile proceedings are humane and civil in nature. The juvenile hearing is not classified as a regular criminal proceeding. For this reason and because of the doctrine of stare decisis, juveniles have no constitutional right to a jury trial within the meaning of the Sixth or Fourteenth Amendments to the United States Constitution.

Argument

I.

THE JUVENILE DEFENDANTS HEREIN CHARGED DO NOT HAVE A RIGHT TO A JURY TRIAL WITHIN THE MEANING OF THE SIXTH AMENDMENT. THE FRAMERS OF THE CONSTITUTION AND ESPECIALLY THE SIXTH AMENDMENT INTENDED THAT THE PROTECTION TO BE AFFORDED DEFENDANTS CHARGED WITH CRIME SHOULD BE THAT DEFENDANTS WOULD BE "JUDGED BY THEIR PEERS." IT IS IMPOSSIBLE UNDER PRESENT DAY STANDARDS FOR THE SELECTION OF JURORS, THAT JUVENILES COULD EVER BE "JUDGED BY THEIR PEERS."

The Sixth Amendment entitles one accused of crime to be "tried by an impartial jury." The meaning of the phrase "trial by an impartial jury," within the context of the Amendment, was set out most clearly by Mr. Justice Sutherland, deciding *Patton* v. *United States:*

> "[T]hat it means a trial by jury as understood and applied at common law, and includes all the essential elements as they were recognized in this country and in England when the Constitution was adopted, is not open to question."
>
> *Patton* v. *United States.*
> 281 U.S. 276, 288 (1930)

One of the essential elements recognized in this country and in England under the Common Law, was the right to trial by jury "of one's peers." The peer group selected to be jurors at the accused's trial should be persons who would be "indifferent and free from prejudice." See, *United States* v. *Burr,* Fed. Cas. No. 14,692g and 14,693 (Cir. Ct. D.Va., 1807).

While the Commonwealth will agree that jury trials are "fundamental to the American scheme of justice and due process . . . Duncan at 149.", the Commonwealth maintains that this court must look to see exactly what "due process of law" originally meant, especially with regards to just who is entitled to a trial by jury, as did Mr. Justice Black in his dissenting opinion rendered in *In Re Winship*. Mr. Justice Black stated:

> "Due process of law" was originally used as a shorthand expression for governmental proceedings according to the "law of the land" . . . Both phrases are derived from the laws of England and have traditionally been regarded as meaning the same thing. The *Magna Charta* provided that:
>
> No *freeman* shall be taken, or imprisoned, or be disseised of his freehold, or . . . be outlawed or exiled, or otherwise destroyed; *nor will we not pass upon him, nor condemn him but by lawful judgment of his peers . . .*" (Emphasis supplied)
>
> *In The Matter of Winship,*
> 90 S.Ct. 1068 at 1080 (1970)

The whole history of the Sixth Amendment as it applies to the "fundamental scheme of justice" forthcoming to all American citizens, reveals the fact that persons charged with regular criminal acts were to be "emancipated" persons who had their right to jury trials by other "emancipated" jurors either residing in the same neighborhood with the accused, were of the same vicinage as the accused or, at the very minimum, were of somewhat the same "age" bracket as the accused. The aforestated rationale would then satisfy minimum standards of defendants being judged by an "impartial jury who were their peers." See, Heller, *The Sixth Amendment*, PP-17-29 (1951).

Examples are abundant which uphold the previous paragraph. Provisions for trials by only the defendants' peers can be found in the history of colonial America long before the drafting of our Constitution and the Sixth Amendment. In the Constitution for the Province of East Jersey 1683, it was written:

> "No person or persons within the said Province shall be taken and imprisoned, or be devised of his freehold, free custom or liberty . . . or [in] any other way destroyed; nor shall . . . *judgement be pass'd upon them but by lawful judgement of their peers . . . tryals shall be by twelve freehold men, and as near as may be, peers and equals, and of the neighborhood, and freehold men without just exception . . .*" (Emphasis supplied)
>
> Thorpe, *The Federal And State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories and Colonies, Now and Heretofore Forming the United States of America,* (Washington: Government Printing Office, 1909) V.1, PP's. 2580, 2581.

Before the signing of the Declaration of Independence and during the period of Colonial Virginia, jury trials therein differed from those held in the Mother country (England) with respect to two requirements. They were, that a jury in Virginia be drawn from (1) the same vicinage as the accused and (2) the same relative "age" bracket. (i.e.—age of emancipation) As was stated by Mr. Heller in his book, *The Sixth Amendment,* at page 20:

> "As [in] all cases involving loss of life or limb . . . the jury seems to have been selected . . . by statute . . . by providing that the sheriff of the accused's county was to summon six freeholders from the neighborhood

for jury service, while the other six members of the panel would be selected from the Court's bystanders if they were fit gentlemen of relatively the same age as the accused as had been the custom. A strict property qualification further limited the number of those eligibles for jury service."

Heller, *The Sixth Amendment*, 20, (1951)

Indeed, before the creation of the United States Constitution, the Continental Congress declared "that the respective colonies are entitled to the common law, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage . . ." See, *Declaration of Rights of the Continental Congress* (1774), Article 5; reprinted in Tansill, ed., *Documents Illustrative of the Formation of the Union of the American States* (House Document No. 398, 69th Congress, 1st session, Washington: Government Printing Office, 1927), P.3. In addition, Patrick Henry made the following remark at the Virginia Convention on June 20, 1788 when the separate State Legislatures were deciding and debating on whether to adopt the proposed Federal Constitution of 1783:

"The idea which I call true vicinage is, that a man shall be tried by his neighbors and by his peers . . ."

Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, (Philadelphia: J.B. Lippincott Co., 1835) at PP's, 568, 569

Similar remarks concerning where the provisions for trial by jury originated in the Federal Constitution were heard in the Massachusetts Constitutional Convention wherein Delegate Holmes addressed himself to some of the necessities of the federal jury trial provisions, when he stated:

> "It is a maxim universally admitted, that the safety of the subject consists in having a right to a trial free and impartial as the lot of humanity will permit. . . . a person shall . . . have a right to insist on a trial . . . where a jury of the peers would . . . have an opportunity to form a judgement of the character of the person charged with the crime . . .
>
> [W]here a person must be tried by a jury of strangers; a jury . . . may be interested in his conviction; and he may . . . be incapable of making such a defense as he is, in justice, entitled to . . ."
>
> Elliott, *Op. Cit.*, supra, at PP's 109-111 (1835)

The aforestated philosophy of delegate Holmes is used to show the emphasis in which the concept of the Sixth Amendment created a right to jury trials for "peer groups" who were essentially from the same vicinage and of the same relative emancipated age. This was the framers intent.

Once again, the Commonwealth must draw attention to the fact that a juvenile hearing or proceeding has never been conceived to be a regular criminal trial. Rather it is interpreted to be a civil and humane proceeding. Thus, if the petitioners argue that . . .

> "The specific holding in *Duncan* was that the right to a jury trial is a fundamental right and hence must be recognized by the states as part of their obligation to extend due process of law *to all persons within their jurisdiction* . . . the court specifically stated that this due process requirement extended to all persons; no age limitation was placed on this requirement." (Emphasis supplied)

the petitioners would be in error. They would be in error because of the aforementioned historical anaylsis on

where the "right to trial by jury" originated and because of the language found in the *Duncan* case itself. What the Supreme Court meant by saying "to all persons within their jurisdiction" was synonymous to stating: "to all emancipated adult persons undergoing regular criminal trials within their jurisdiction." As a matter of fact, the Court in *Duncan* v. *Louisiana* specifically stated that all persons who are entitled to a jury trial, are also entitled to the express right of being judged by their peers. The Court stated:

> "The framers of the Constitution strove to create an independent judiciary but insisted upon the further protection against abritrary action.
>
> Providing an accused with the right *to be tried by a jury of his peers* gave him an inestimable safeguard against the corrupt and over zealous prosecutor and against the compliant, biased or eccentric judge." (Emphasis supplied)
>
> *Duncan* v. *Louisiana,* 391 U.S. 145 at 156 (1968)

The *Declaration of Rights* in the Constitution of Massachusetts at Point One, Article Twelve also states:

> "XII. No subject shall be . . . deprived of his life, liberty or estate, but by the judgement of his peers . . ."

The aforestated article reveals the fact that in Massachusetts persons are to be essentially tried by their "peers". Massachusetts General Law Chapter 234 Section 1 states in pertinent part:

> "1. A person of either sex qualified . . . shall be liable to serve as a juror, except that the following persons shall be exempt:

. . . . persons under twenty two years of age . . ."
Amended by St. 1969, Ch. 148 section 1.

Thus it can be seen that the Legislature of Massachusetts never intended for juveniles to be "judged by their peers." This statute impliedly recognizes what has been stated for hundreds of years in case law and at common law. For example, in the "heyday" of the common law in England, Lord Coke made the following comment on Littleton's Institute at page 155:

> "He that is of a jury, must be liber homo, *that is not only a freeman and not of bond, but also one that hath such freedom of mind as he stands indifferent* as he stands unsworn." (Emphasis supplied)
> *Wood* v. *United States,*
> 83 F2d 587, 590 (C.A.D.C. 1936)

It may be ironical that the Commonwealth of Massachusetts by insisting that juvenile defendants do not have a right to trial by jury may, in fact, be protecting the interests and welfare of future juvenile offenders. Long ago, the Supreme Court of the United States recognized that there are certain persons who if allowed to sit on a jury might be inherently prejudicial to charged defendants. For example, if the servants of a defendant master, or vice versa, were allowed to sit on the jury, the master, or vice versa, might suffer undue prejudice. See, *Crawford* v. *United States,* 212 U.S. 183 (1909). By the same token, if government employees were allowed to sit on juries at trials in which the defendants were charged with committing crimes against the government, the accused defendants might suffer undue prejudice. See, *Wood* v. *United States,* 83 F2d 587 (1936). This is the point: If juvenile defendants are granted a right to trial by jury, they will

necessarily have to be judged by persons who are at least twenty-two years of age or older. See, *Mass. G.L. Ch. 234 sec. 1* (Amended 1969). It is a matter of common judicial knowledge that most jurors are selected from voter registration lists or from telephone books and that, furthermore, most of the jurors selected are persons who are elderly and non working or persons who do not have regular occupations, therefore giving these stated persons time with which to sit on juries. Thus it can be seen that in a vast majority of the juvenile cases, should a right to trial by jury be granted, the end result would be "children" being judged, not by their peers, but by persons within the community who might possibly be twenty or thirty years older than the defendants and much more likely to be "interested in a conviction." Prejudice might well result to juveniles by having their juries composed predominantly of past or present "parents". Indeed, it may well work to the defendant juvenile's detriment, the fact that many of the older persons who abundantly compose much of today's juries and are themselves parents or even grandparents, might view the defendants more as "recalcitrant children" in need of a "good horsewippin' " (ie.—convictions galore) than as regular criminal defendants entitled to complete indifference.

It is questionable therefore, whether any "humanity" would be shown to a juvenile in a trial by adult jurors—even one designated as a "humane juvenile hearing." See, the *Concurring opinion* of Harlan J. and the *Dissenting opinion* of Burger C.J. and Stewart J., in the case of *In The Matter of Winship*, 397 U.S. 358, 90 S.Ct. 1068 at 1074, 1078, 1079 (1970).

The legislature of Massachusetts has been keenly aware of the 'peer group" problems that juveniles charged with crime would have in seeking a jury trial. In 1962 a report was submitted by the *Legislative Research Council* relative

to a study on an independent system of juvenile courts in order to feasibly find a way of creating a "juvenile jury" system in juvenile courts. Their report spawned some recent 1969 and 1970 House and Senate Bills which might create "juvenile juries." See, *House Document #3737* (1962). In 1969, Senate Act No. 653 was introduced in order to create "juvenile juries." In 1970, Senate Act No. 558 was proposed in order to further study the possibility of creating "teen juries" for juvenile hearings. To a similar effect is House Bill No. 4070 (1970), a bill to study the feasibility of lowering the age requirements for jury service.

The Commonwealth submits that this flurry of proposed legislation shows that the Legislature of Massachusetts realizes the problem of juveniles having a right to jury trials when, in fact, the jury in no way would resemble their "peer group." It is further submitted, that the introduction of the aforestated Acts by various members of the legislature, reveals that both houses of that body are acutely aware of the fact that the Sixth Amendment was enacted by the original framers to give "adults" the benefit of jury trials in regular criminal proceedings, "by their peers". The wisdom and consideration of the legislature in proposing such a concept as "teen juries" should be left to stand by this honorable court. The State legislature should be deemed to be acting in the best interests of the general welfare, health, safety and morals of all citizens within its jurisdiction, including children. In *Mass. G.L. Ch. 119 Sec. 53* the following statement is found:

> "53. . . . the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. *Proceedings against*

children under said sections shall not be deemed criminal proceedings." (Emphasis supplied)

Finally, to substantiate the Commonwealth's position that juvenile proceedings are not to be thought of as criminal trials but rather as humane and civil hearings, In *Mass. G.L. Ch. 119 sec. 65* the following is stated:

> "Courts shall designate suitable times for the hearing of cases of children under 17 years of age, which shall be called the juvenile sessions . . . said sessions shall be separate from that for the trial of criminal cases, and shall not . . . be held in conjunction with other business of the court, and shall be held in rooms not used for criminal trials . . ."

II.

JUVENILE PROCEEDINGS ARE HUMANE AND CIVIL IN NATURE. THE JUVENILE HEARING IS NOT CLASSIFIED AS A REGULAR CRIMINAL PROCEEDING. FOR THIS REASON AND BECAUSE OF THE DOCTRINE OF STARE DECISIS, JUVENILES HAVE NO CONSTITUTIONAL RIGHT TO A JURY TRIAL WITHIN THE MEANING OF THE SIXTH AMENDMENT OR THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Supreme Court of California found occasion to interpret what was the meaning of *In Re Gault,* supra, in the case of *In Re K.D.K.* when it stated:

> "*In Application of Gault* . . . the Supreme Court found deficient in many respects the procedures by which under Arizona law Gault was placed in an industrial home for boys where he might have been kept until his majority, a matter of about six years. Those

deficiences were inadequate notice of hearing, both as to time permitted for preparation and as to the statement of the alleged misconduct; failure to furnish counsel; use of admissions made by Gault without his having been advised of his rights to counsel and to remain silent; and failure to produce the witness as to the misconduct, whose statement as made to the police was presented at the hearing. The Supreme Court held those defects to be denials of constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the Federal Constitution.

* * *

"The Court, however, disavowed any intention to deal a death blow to the juvenile court system. *The majority stated:*

"While due process requirements will, in some instances, introduce a degree of order and regularity to juvenile Court proceedings to determine delinquency, and in contested cases will introduce some elements of the adversary system, *nothing will require that the conception of the kindly juvenile judge be replaced by its opposite,* nor do we here rule upon the question whether ordinary due process requirements must be observed with respect to hearings to determine the disposition of the delinquent child." (Emphasis supplied) *In Re K.D.K.*, 75 Cal. Rptr. 136, 138 (1969)

The decision in *In Re Gault,* supra, and its 1966 predecessor, *Kent* v. *United States,* 383 U.S. 541, have engendered a spawn of law review articles covering specific matters ruled upon in these cases. A symposium was also conducted at Hastings Law School in Los Angeles covering the whole field of proceedings in juvenile Courts, both in theory and practice. See *79 Hastings Law Journal 29, 47* (1967): *Juvenile Justice In California,* a Symposium. In addition,

a team of writers in the Chicago Bar Record, in *From Gault to Urbasek 49 Chicago Bar Record 162*, opines that the maintenance of the existing juvenile court system, while deciding contested jurisdictional allegations with all the procedural rules of a criminal trial, *but without a jury*, is a desirable end well worth the cost.

Most importantly, the Court in *In Re K.D.K.* went on to state:

> "We are of the opinion that *Gault*, does not hold more than that the juvenile is entitled to the full protection *of specific constitutional guarantees, and that the hearing must be fairly conducted within a proscribed framework.*
>
> • • •
>
> *"We are not prepared to depart from the holdings of the California courts that proceedings in the juvenile court are, indeed, of a civil nature.*
>
> • • •
>
> "We are in accord with the view that legislation that places those subject to the jurisdiction of the juvenile court in a different classification from those not so subject, with regard to conduct of the same general character, is constitutional. . . . Juveniles over whom the juvenile court has refused to take jurisdiction have sometimes claimed that such refusal unconstitutionally denied them the benefits of the juvenile court procedure. (For example See, *People* v. *Dotson*, 46 Cal. 2d 891, 895, 299 P2d 875.) (Emphasis supplied)
>
> *In Re K.D.K.*, 75 Cal. Rptr. 136 at 141 (1969)

The Supreme Court of New York Criminal term, in a case entitled *People* v. *K.* stated:

"Last year the United States Supreme Court decided in *In the Matter of Gault* ... that juvenile court proceedings are required to meet constitutional standards of due process as to notice, right to counsel, privilege against self incrimination and the right to confront and cross examine sworn witnesses. Early this year the U.S. District Court . . . in *Nieves* v. *United States,* D.C. 280 F.Supp. 994 stated that the Federal Juvenile Delinquency Act was unconstitutional to the extent that it required a juvenille delinquent to waive his right to a jury trial in order to be proceeded against under the act. That court relied upon *In the Matter of Gault,* supra. I cannot extend *In the Matter of Gault* as the court did in *Nieves* v. *United States,* supra. *I do not read a mandate of a jury trial im the Matter of Gault; on the contrary, I am of the opinion that the Court expressly excluded same."* (Emphasis supplied)

People v. *K.,*
58 Misc. 2d 526 296 NYS2d 404, 405 (1968)

The sound rationale of the learned judge in *People* v. *K.,* supra, may be seen by looking at the majority opinion itself rendered in the case of *In Re Gault* 387 U.S. 1 (1967). Therein, it can be seen that the question of jury trials for juvenile defendants was alluded to by the Court. At page 13 of 387 U.S., the Court said:

"We do not even consider the entire process relating to juvenile 'delinquents.' For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post adjudicative or disposition-process . . . We consider only the problems presented to us by this case. These

> relate to the proceedings by which a determination is made as to whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part . . ."

The Commonwealth of Massachusetts maintains that the only interpretation that can be made from the aforestated paragraph is that the court was ruling on the manner in which the trial or proceeding was to be conducted. Again at page 14, the Court continued:

> "From the inception of the juvenile court system, wide differences have been tolerated—indeed insisted upon—between the procedural rights accorded to adults and those of juveniles. In practically all jurisdictions, there are rights granted to adults which are withheld from juveniles. In addition to the specific problems involved in the present case, for example, *it has been held that the juvenile is not entitled to bail, to indictment by grand jury, to a public trial or to trial by jury.*" (Emphasis supplied)

The Court continues. In a footnote at page 19 of 387 U.S., the majority opinion quotes the late Chief Justice of the New Jersey Supreme Court:

> ". . . The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally a fair hearing . . ."

Finally, at page 30, the Court quotes from a previous juvenile case entitled *Kent* v. *United States*, 383 U.S. 541 (1966) by stating:

> *"We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial* or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." (Emphasis supplied)

It thus becomes obvious that the Supreme Court in *In Re Gault*, supra, was setting down guidelines by which juveniles were to be tried and did not consider a trial by jury essential to due process and trial treatment of juveniles.

The Supreme Court of Oregon in the case of *State* v. *Turner*, seemed to reaffirm the aforestated rationale. In the *Turner* case, supra, the Court specifically addressed itself to the differences between an adult criminal trial and a juvenile delinquency hearing, with the former conceived of as criminal in procedure whereas the latter is considered as civil in nature. The Court stated:

> "The *Gault* decision stops short of holding that trial by jury is mandatory in a juvenile delinquency hearing . . ."
>
> • • •
>
> ". . . two states held, prior to the publication of the *Duncan* and *Bloom* decisions . . . that fairness and basic procedural due process could be assured a juvenile hearing without "the formality of a jury trial." *In Re Estes*, 438 P2d 205 (1968); *Commonwealth* v. *Johnson*, 211 Pa. Super. 62, 234 A2d 9 (1967). After *Duncan* and *Bloom*, *Dryden* v. *Commonwealth*, Ky., 435 SW 2d 457 (1968) also held that a jury trial was not essential to due process in [a] juvenile court.
>
> • • •
>
> Adverting again to the fundamental fact that we are dealing with children and not with adults, the ultimate

question in a juvenile proceeding is not one of "guilt" or "innocence" but rather one of determining what is in the best interest of the child. Many thoughtful students of behavior and rehabilitation believe there are valid policy reasons for holding that due process, when applied to children, does not . . . include the right to have a jury pass upon the question which must lie at the threshold of juvenile wardship." (For examples, see *The President's Commission on Law Enforcement and Administration of Justice,* Task Force Report: Juvenile Delinquency and Youth Crime 38 (1967); Paulsen, *Fairness to Juvenile Offenders, 41 Minn. L. Rev. 547, 559* (1957)

The Supreme Court of Oregon in *State* v. *Turner* continued:

". . . courts have the discretionary power to allow a jury trial for a child . . . by remanding the child to the circuit court to be tried as an adult . . . Moreover, because such a remand carries with it the pains and penalties of the criminal law as well as the procedural safeguards thereof, demand by children for jury trials in the criminal court has not been a common phenomenon. Indeed, in one recent case, a child who had been remanded for trial as an adult unsuccessfully challenged the constitutionality of his remand . . . claiming that the remand denied him due process of law as a child.

• • •

"The crucial distinction between juvenile and other loss of liberty cases is that the juvenile law is dealing with a child and not with an adult. The difficult problem, therefore, is whether the court can give the child

all the rights of an indicted adult without at the same time abandoning the *parens patriae* concept of juvenile justice which has evolved during the past century.

• • •

"It would be simple, by striking down the juvenile code, to return the accused child to the criminal courts and thereby afford him the rull range of constitutional due process which accompanies a criminal trial. The juvenile then would be entitled to indictment, bail, and all other rights of an adult. But the *Gault* case recognized that, despite its faults when loosely administered, the *parens patriae* concept has some residual value, and expressly refrained from a "root and branch" extirpation of the separate juvenile system."

State v. *Turner*,
OR., 453 P2d 910, 911, 913 and 913 (1969).

The petitioners may argue that the Supreme Court of the United States extended the procedural rights of juveniles furthermost in the recent case of *In The Matter of Winship*, 397 U.S. 358 (1970). This assertion would be in error. It would be in error because of the express language as found within that cited case, including the majority, concurring and dissenting opinions.

First, the Majority opinion:

Mr. Justice Brennan wrote the majority opinion. He stated on page 1073 of 90 S.Ct. 1068 (1970):

. . .

"Nor de we perceive any merit in the argument that to afford juveniles the protection of proof beyond a reasonable doubt would risk destruction of beneficial aspects of the juvenile process. Use of the reasonable doubt standard during the adjudicatory hearing will

not disturb New York's policies that a finding that a child has violated a criminal law does not constitute a criminal conviction, that such a finding does not deprive the child of his civil rights, and that juvenile proceedings are confidential. *Nor will there be any effect on the informality, flexibility, or speed of the hearing at which the fact finding takes place.* And the opportunity during the post adjudicatory or dispositional hearing for a wide ranging review of the child's social history and for his individualized treatment will remain unimpaired. Simularly there will be no effect on the procedures distinctive to juvenile proceedings which are employed prior to the adjudicatory hearing." (Emphasis supplied)

Second, Mr. Justice Harlan's concurring opinion:

On pages 1075 and 1078 of 90 S.Ct. 1068 (1970) Mr. Justice Harlan states:

"No one, I dare say, would contend that state juvenile court trials are subject to *no* federal constitutional limitations. Differences have existed, however, among the members of this court as to what constitutional protections do apply . . ."

* * *

"It is of great importance, in my view, that procedural structures not be constitutionally imposed that jeopardize "the essential elements of the State's purpose" in creating juvenile courts, . . . In this regard, I think it worth emphasizing that the requirement of proof beyond a reasonable doubt that a juvenile committed a criminal act before he is found to be a delinquent does not (1) interfere with the worthy goal of rehabilitating the juvenile, . . . (3) *burden the juvenile*

courts with a procedural requirement which will make juvenile adjudications significantly more time consuming, or rigid. Today's decision requires *a juvenile judge* to be more confident in his belief that the youth did the act with which he has been charged." (Emphasis supplied)

Third, the dissenting opinion:

Mr. Chief Justice Burger and Mr. Justice Stewart joined in dissenting to the majority opinion rendered *In the Matter of Winship,* supra. On pages 1078 and 1079 of 90 S.Ct. 1068 (1970) the two Justices stated:

"The Court's opinion today rests entirely on the assumption that all juvenile proceedings are "criminal prosecutions," hence subject to constitutional limitations. This derives from earlier holdings, which like today's holding, were steps eroding the differences between juvenile courts and traditional criminal courts. The original concept of the juvenile court system was to provide a benevolent and less formal means that criminal courts could provide for dealing with the special and often sensitive problems of youthful offenders. Since I see no constitutional requirement of due process sufficient to overcome the legislative judgement of the states in this area, I dissent from further strait jacketing of an already overly-restricted system. What the juvenile court systems need is not more but less of the trappings of legal procedure and judicial formalism; *the juvenile system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court.*

• • •

"Much of the judicial attitude manifested by the Court's opinion today and earlier holdings in this field

is really a protest against inadequate juvenile court staffs and facilities; we "burn down the stable to get rid of the mice." The lack of support and the distressing growth of juvenile crime have combined to make for a literal breakdown in many if not most juvenile courts.

• • •

"My hope is that today's decision will not spell the end of a generously conceived program of compassionate treatment intended to mitigate the rigors and trauma of exposing youthful offenders to a traditional criminal court; each step we take turns the clock back to the pre-juvenile court era. *I cannot regard it as a manifestation of progress to transform juvenile courts into criminal courts,* which is what we are well on the way to accomplishing." (Emphasis supplied)

While the Commonwealth of Massachusetts will concede as Mr. Justice Douglas stated in *Debacker* v. *Brainard*, 90 S.Ct. 163, 167 (1969), that "there are many problems and inadequacies of the juvenile court system," the Commonwealth maintains that the "solution" of this problem is in the creation of "special juvenile courts" with "specific juvenile judges" as was proposed and is currently being studied by the *Legislative Research Counsel* of the Massachusetts Legislature. See, *Report Submitted By The Commission Relative To An Independent System Of Juvenile Courts,* House Document No. 3737 of (1962) and Senate Bills No's. 653 of (1969) and 558 of (1970).

The solution, therefore, is not in the creation of adult jury trials in juvenile proceedings. We must not forget that juvenile proceedings are envisioned as civil and humane in nature; they were never conceived to be accusatory or criminal proceedings. As the Supreme Court of Pennsyl-

vania in *Commonwealth* v. *Fisher* best summed up the motives and rationale behind State Legislatures conceiving and creating separate juvenile proceedings. The Court stated:

> "*To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the legislature surely may provide for the salvation of such a child,* if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection. The natural parent needs no process to temporarily deprive his child of its liberty by confining it in his own home, to save it and to shield it from the consequences of persistence in a career of waywardness, nor is the state when compelled as *parens patriae,* to take the place of the father for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts. *When the child gets there and the court with the power to save it, determines on its salvation, and not its punishment, it is immaterial how it got there.* The act simply provides how children who ought to be saved may reach the court to be saved." (Emphasis supplied)
>
> *Commonwealth* v. *Fisher,*
> 213 Pa. 48, 53, 62 A. 198, 200 (1905)

Wherefore the Commonwealth of Massachusetts respectfully asks this court find that under the doctrines of stare decisis, common sense, humanity to juveniles, the Sixth and the Fourteenth Amendments, juveniles have no constitutional right to a trial by jury.

Conclusion

Wherefore the Commonwealth of Massachusetts as Amicus Curiae in this case, respectfully asks this court find that juveniles do not have a right to a jury trial in their juvenile hearings within the meaning of the Sixth or Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 128

IN RE BARBARA BURRUS, ET AL., *Petitioners*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA AND THE NEIGHBORHOOD LEGAL SERVICES PROGRAM OF WASHINGTON, D.C. AS AMICUS CURIAE

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BRIEF FOR THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA AND THE NEIGHBORHOOD LEGAL SERVICES PROGRAM OF WASHINGTON, D.C. AS AMICUS CURIAE

The Public Defender Service for the District of Columbia and the Neighborhood Legal Services Program of Washington, D.C. file this brief *Amicus Curiae* pursuant to consent of the parties.

INTEREST OF AMICUS CURIAE

The Public Defender Service (PDS) for the District of Columbia (formerly the Legal Aid Agency) is required by statute to represent youths charged with delinquent conduct in the D.C. Juvenile Court. Presently the PDS has six attorneys assigned to the court full-time, and during the past two years PDS attorneys have appeared in more than 2500 delinquency cases.

The Neighborhood Legal Services Program (NLSP) of Washington, D.C. is funded by the Office of Economic Opportunity to represent indigent clients in civil matters before courts and government agencies. It has nine neighborhood based offices where eligible residents may seek legal aid. Since its formation in 1965, NLSP has represented youths in the D.C. Juvenile Court, and in 1969 handled 117 juvenile matters.

Both the PDS and NLSP believe that the right to a jury trial is essential in providing adequate legal representation in many of the cases its attorneys handle, and that a Supreme Court decision declaring this right constitutionally guaranteed is necessary at this time. Effective February 1, 1971, pursuant to Public Law 91-358, the right to a jury trial in the D.C. Juvenile Court—a right which has existed by statute since 1906—will be repealed.

QUESTION PRESENTED

Whether juveniles who are denied trial by jury on the issue of their delinquency in juvenile court proceedings are deprived of their rights under the Sixth and Fourteenth Amendments?

SUMMARY OF ARGUMENT

Reliable evidence establishes that the results of a sizeable percentage of cases are determined by whether the verdict is rendered by a judge or jury. While judges tend to be less lenient than juries, this is primarily due to a bias against defendants, not to greater experience in evaluating testimony. Also, judges are frequently, perhaps unintentionally, influenced by prejudicial information which has no legal relevance to a decision in the case, and which is properly concealed from a jury. This Court itself has recognized that the jury acts as a protection against the "compliant, biased, or eccentric judge," and such protection is particularly important in the juvenile field for juvenile court judges are sometimes not as well qualified as those found in other trial courts. Indeed, an intensive empirical study conducted after

this Court's landmark *Gault* opinion found that juvenile court judges often flagrantly withhold from juveniles constitutional rights guaranteed in that decision. Juries, on the other hand, are not simply sentimentalists, but are capable of conscientiously applying the law, particularly the standard of reasonable doubt, to difficult factual situations.

Extension of the jury trial right to all juvenile courts would not precipitate serious or unmanageable administrative problems. Presently in the United States the statutes of eleven jurisdictions contain provisions for jury trials in delinquency cases. In recent months *Amicus Curiae* have surveyed the experience with jury trials of thirty-one juvenile courts situated in these eleven jurisdictions. We conclude that jury trials are infrequently requested in juvenile delinquency cases, even where counsel is present and the right to demand such trials has existed for many years. In fact, in only four of the thirty-one juvenile courts surveyed have there clearly been more than fifteen requests and/or jury trials held during the past five years. Not one of the thirty-one jurisdictions has experienced administrative problems attributable to the jury trial right. In short, constitutional recognition of jury trials in delinquency cases will avoid disruption of the juvenile justice system while offering the same benefits to accused youths now available to adult defendants.

ARGUMENT

I. EMPIRICAL EVIDENCE DEMONSTRATES THAT JURY TRIALS IN JUVENILE COURTS ARE AN ESSENTIAL SAFEGUARD FOR YOUTHS CHARGED WITH DELINQUENCY.

A. The Outcomes Of A Significant Number Of Trials Depend Upon Whether A Judge Or Jury Is Used.

The classic study of the jury system by professors Kalven and Zeisel of the University of Chicago Law School, cited by this Court in *Duncan* v. *Louisiana*, 391 U.S. 145 (1968), established conclusively that in a substantial number of criminal cases the jury trial leads to different results

than would have obtained in judge trials. From an exhaustive analysis of 3,576 cases the authors concluded:

> The jury is less lenient than the judge in 3% of the cases and more lenient than the judge in 19% of the cases. Thus, the jury trials show on balance a net leniency of 16%. This means that in the cases which the defendant decides to bring before the jury, on balance, he fares better 16% of the time than he would have in a bench trial. Kalven and Zeisel, *The American Jury* 59 (1966).

In the cases where the judge and the jury disagreed on the verdict—22% of the cases overall—the differences were generally due to varying interpretations of the evidence by the judge and jury.[1] Differences in outcome were not, however, due to a succumbing on the part of the jury to sentiment, but rather:

> The sentiment gives direction to the resolution of the evidentiary doubt; the evidentiary doubt provides a favorable condition for a response to the sentiment. *Id.* at 165.

The jury, in close cases "by its very architecture, permits a kind of response to common-sense equities which the institution of the judge does not equally permit." *Id.* at 87.

The application of these findings to the realm of juvenile law is self-evident. A recent survey of urban juvenile courts showed that juvenile defendants in over 40% of the cases did not initially plead guilty to the charges. Lefstein, Stapleton and Teitelbaum, *In Search of Juvenile Justice,*

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[1] The judges, however, felt the juries understood the evidence in the vast majority of cases. *Id.* at 152-53.

3 Law & Society Review 491, 530 (1969).[2] Even if, as the Kalven and Zeisel study showed (and as the results of our own juvenile court survey reprinted in Part II of this brief strongly suggest) jury trial is typically resorted to only in serious and close cases, its potential as an "inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge" is just as great in juvenile as in adult criminal trials. *Duncan* v. *Louisiana, supra* at 156.

The Kalven and Zeisel study also showed juries were most apt to differ with judges in several kinds of cases with decided import for juveniles. These included cases where the jury felt the wrongful conduct to be *de minimis* in light of the punishment, which with juveniles means possible incarceration to age 21 for any kind of offense. *Id.* at 262. But, even more critical, it included cases that turned on testimony or actions of police officers, by far the most common complainants in juvenile cases. *Id.* at 319. In England, the same phenomena of the jury's more skeptical attitude toward police witnesses has been commented upon. See Cornish, *The Jury* (1968). The author there concluded:

> For the moment one can only conclude that of the various aspects of the jury's function as a bulwark of liberty the most important today is its role in preventing police influence in the courts from becoming dominant. For this reason alone, it is desirable that independent laymen should continue to have some voice in deciding the outcome of serious criminal cases.
>
> • • •
>
> With the growth of police forces, and the number of prosecutions instituted by them, it has fallen more and more upon the jury to provide some check, in serious cases, that the police do not have it all their own way.

[2] The data for this study was gathered by participant observers in three urban juvenile courts (referred to as Gotham, Metro and Zenith). The observers took notes on delinquency cases with the objective of collecting qualitative data on the impact of counsel and on the operation of juvenile courts generally. See pp. 494-504 for a detailed discussion of the characteristics of courts and sample studied and the methodology used.

Cornish, *supra* at 143-4.

On the other hand, a recent in-depth study of an urban juvenile court documented just the opposite attitude by juvenile judges toward conflicts of testimony between youths and police officers.

> While a denounced youth has a fair chance of successfully discrediting a complainant of his own age, and some chance where the complainant is a family member, counter-denunciation directed against officials, particularly against the most frequent complainants in the juvenile court, the police, almost inevitably fail. In fact, to attempt to contradict the police and to a lesser extent other officials, is to risk fundamentally discrediting moral character, for the court recoils against all attacks on the moral authority of any part of the official legal system. Emerson, *Judging Delinquents* 143-5 (1969).[3]

A juvenile, as much as an adult, deserves the benefit of community scrutiny of complainants who are part of the official law enforcement establishment.

A further cause found by Kalven and Zeisel for judge-jury disagreement in close cases was the judge's every-day familiarity with certain types of crimes, common defenses, and even with the specific past record of the individual defendant. Judges were, as a result of this experience, much harder to convince of innocence. Although judge and jury are both theoretically confined to the record in any case, experts here and abroad agree that a judge cannot help but be influenced in his reactions to particular defendants by his daily experience in the criminal courtroom. See Cornish, *supra* at 159-60:

> Regular acquaintance with the vagaries of conduct that provide the daily fare of the criminal courts is unlikely to be experience leading to an optimistic or trusting view of human nature. . . . The danger of an experi-

[3] The data for this study was collected through participant observation at a juvenile court in a large metropolitan area. Participant observation was complemented by interviews with court staff about observed cases. "Research centered on the progress of individual cases through the stages of court processing." *Ibid.*, pp. ix, x.

> enced judge responding 'I've heard that one before' to a case of genuine innocence is one of the very real problems of the system of criminal justice.

Compare Kalven and Zeisel, *supra* at 8:

> . . . [I]t is argued that twelve heads are inevitably better than one; that the jury as a group has wisdom and strength which need not characterize any of its individual members; that it makes up in common sense and common experience what it may lack in professional training, and that its very inexperience is an asset because it secures a fresh perception of each trial avoiding the stereotypes said to infect the judicial eye.

Judges in the jury study often knew information about the particular case before them that was not in the trial record, emanating from pretrial negotiations, motions to suppress, blood tests not offered for admission, withdrawals of guilty pleas, prior arrests, acquittals or even convictions for the same kind of crime. *Id.* at 123. Most crucial, the jury will not know of a defendant's prior record unless he takes the stand, and not even then in all cases, while the judge will almost inevitably know about it. *Id.* at 128, 147. Juries were found to be most sympathetic to a first, and especially a young, offender who took the stand in his own defense. *Id.* at 178.

The opportunity for a juvenile judge to recognize a repeater in his court is typically greater than in the case of an adult defendant. For juvenile judges are more likely to have specialized calendars, and in many jurisdictions all youths come before only one or several judges at the most. Thirty-three percent of delinquency referrals to the District of Columbia Juvenile Court, where there are three judges, have been previously adjudicated in that court.[4] The problem in juvenile courts is intensified by the frequent availability to the judge of social investigation reports prior to a decision on the facts of the case:

[4] See 1969 Annual Report, Juvenile Court of the District of Columbia, table 5A, page 41.

> Perhaps the height of the juvenile court's procedural informality is its failure to differentiate clearly between the adjudication hearing, whose purpose is to determine the truth of the allegations in the petition, and the disposition proceeding, at which the juvenile's background is considered in connection with deciding what to do with him. In many juvenile courts the two questions are dealt with in the same proceeding or are separated only in the minority of cases in which the petition's allegations are at issue. *Even where adjudication and disposition are dealt with separately, the social reports, containing material about background and character that might make objective examination of the facts of the case difficult, are often given to the judge before adjudication.* PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 35 (1967) (Emphasis supplied).

A final finding of the jury study emphasizes the relationship between the right to a jury and the right to a verdict of guilt beyond a reasonable doubt. This Court last term ruled that the reasonable doubt standard must apply equally to juveniles and adults:

> Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the fact-finder of his guilt. To this end, the reasonable doubt standard is indispensible, for it *"impresses on the trier of fact the necessity of reaching a subjective state of certitude on the facts in issue."*
>
> Moreover, use of the reasonable-doubt standard is indispensible to command the respect and confidence of the community in application of the criminal law. *It is critical that the moral force of the criminal law not be diluted by a standard of proof which leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper fact-finder of his guilt with utmost certainty. In re Winship,* — U.S. —, 25 L. Ed. 2d 368 (1970) (Emphasis supplied).

Yet the jury study found that a ignificant portion of the different verdicts between judges nd juries could be traced to their different "thresholds" f reasonable doubt. The jury's actual standard for convic ion tended to be higher, even though the same legal stand rd applied to both judge and jury:

> Some differences may result n t because judge and jury evaluate credibility different , but because they interpret differently the legal nor n of proof beyond a reasonable doubt. The jury m y find the evidence as credible as does the judge a d may weigh it the same as the judge, and yet may d sagree and find the evidence wanting because in it view it falls below the required threshold. Kalven a d Zeisel, *supra* at 166.

A juvenile found guilty by a judge because of his more strict definition of reasonable doubt fa es little better than his pre-*Winship* counterpart adjudic ted under a preponderance of the evidence test. Both ha e been denied vital rights affecting the outcome of their tr ls accorded to adult defendants in the same circumstanc s. As Kalven and Zeisel have so succinctly stated:

> In the end, the point is that e jury, as an expression of the community's conscie ce, interprets this norm more generously and more intensely than does the judge. *If a society wishes to serious about convicting only when the state has bee put to proof beyond a reasonable doubt, it would well advised to have a jury system. Id.* at 189-90. (E phasis supplied).

B. Trial By A Juvenile Court Judge Frequently Offers Little Assurance Of A Fair Result.

In return for forfeiting the ght to a jury trial, the average juvenile court defendant receives little or no *quid pro quo*. The skilled, compassion e, highly expert juvenile court judge is rare indeed. The P esident's Commission on Law Enforcement and the Admin stration of Criminal Justice found:

> One reason for the failure the juvenile courts has

> been the community's continuing unwillingness to provide the resources—the people and facilities and concern—necessary to permit them to realize their potential and prevent them from acquiring some of the undesirable features typical of lower criminal courts in this country. In some jurisdictions, for example, the juvenile court judgeship does not have high status in the eyes of the bar, and while there are many juvenile court judges of outstanding ability and devotion, many are not. One crucial presupposition of the juvenile court philosophy—a mature and sophisticated judge, wise and well-versed in law and the science of human behavior—has proved in fact too often unattainable. A recent study of juvenile court judges in the United States revealed that half had no undergraduate degree; a fifth had received no college education at all; a fifth were not members of the bar. Almost three-quarters devote less than a quarter of their time to juvenile and family matters, and judicial hearings often turn out to be little more than attenuated interviews of 10 to 15 minutes duration. CHALLENGE OF CRIME IN A FREE SOCIETY 80 (1967).

An extensive study of three urban juvenile courts conducted after this Court's ruling in *In re Gault*, 387 U.S. 1 (1967), found implementation of the rights laid down in that decision to be partial, prejudicial or missing altogether. In one court studied, for example, the privilege against self-incrimination was totally ignored. Lefstein, *supra* at 521, table 6. In another court advice of the right to counsel was either omitted completely or was only partially or prejudicially given in 99% of all observed cases. *Id.* at 516, table 5. The study concludes:

> One inescapable conclusion stands out from these data on the right to confrontation . . . , the right to counsel . . . , and the privilege against self-incrimination. . . . Despite the Supreme Court's concern for protecting juveniles in jeopardy of losing their liberty, juveniles were at the time of this study and presumably still are remanded to peno-custodial institutions without being afforded their constitutional rights.
> . . . (T)he fact remains that in the Metro and Gotham

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> juvenile courts—and in courts like Metro and Gotham —children are frequently and sometimes flagrantly denied their constitutional rights. Moreover, if we are correct in the belief that resistance to change is related to deep-seated adherence to *parens patriae* concepts, nurtured over long years of service on the juvenile bench, then the changing of judges from their present ways may be painfully slow. *Id.* at 535, 560-61.

In addition, sociologists say that the typical juvenile court proceeding emphasizes the youth's "powerlessness in the face of court power to sanction and incarcerate" and offers him no way to assert his own moral worth, a result which is anti-therapeutic in its very nature. Emerson, *supra* at 174-180. A jury, on the other hand, as a representative of the outside community, acts as a buffer between the youth and the official judicial establishment.

Overall, then, we find that juvenile courts without juries provide slight assurance that justice will be accorded in all cases. Indeed, this Court in the *Gault* decision judged juvenile proceedings wanting in essential respects, and declared applicable the right to counsel and other safeguards. Now it is time to recognize the necessity of an additional safeguard—trial by jury. We know from empirical data that jury trials, as opposed to court trials, frequently lead to different results. Ample evidence suggests that these differences are a function of judicial bias, whereas the jury is a more objective fact-finder, capable of applying the law (e.g., the reasonable doubt standard) with greater sensitivity.

II. EMPIRICAL EVIDENCE GATHERED FROM THE ELEVEN JURISDICTIONS WHICH ALLOW JURY TRIALS IN DELINQUENCY CASES DEMONSTRATES THAT THEIR USE IS INFREQUENT AND DOES NOT RESULT IN CLOGGED COURT CALENDARS OR DISRUPTION OF JUDICIAL ADMINISTRATION.

The statutes in ten states and the District of Columbia contain provisions for the trial of delinquency cases by

juries.[5] In all but two of these states—Kansas and South Dakota—a jury trial must be accorded if requested by the child or in his behalf.[6] In all eleven jurisdictions the statutes predate this Court's 1967 *Gault* decision.

In order to appraise the administrative difficulties which might be encountered by extending the jury trial right to all states, a systematic survey of experience in the eleven jurisdictions with jury trials was undertaken. In June of this year, a questionnaire together with an explanatory letter was mailed to 30 juvenile courts in the ten jury trial states, and a letter and questionnaire were hand delivered to the District of Columbia Juvenile Court. The cities selected to receive the questionnaire were picked at random, but with special emphasis placed upon polling courts serving large metropolitan areas.[7] For each of the ten states our sample

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[5] Colo. Rev. Stat. Ann. §37-8-2 (1964); D. C. Code §16-2307 (1967); Kan. Gen. Stat. Ann. §38-808 (Supp. 1967); Mich. Comp. Laws Ann. Ch. 712 A.17 (1968); Mont. Rev. Codes Ann. §10-603 (1947); Okla. Stat. Ann. Tit. 10 §1110 (Supp. 1968); S.D. Code §27-8-31 (1967); Tex. Rev. Civ. Stat. Ann. 2338-1, §13(b) (Vernon Supp. 1968); W. Va. Code Ann. §49-5-6 (1966); Wisc. Stat. Ann. §48.25(2) (1957); Wyo. Stat. Ann. §14-108(c) (1961).

[6] The Kansas statute provides that the juvenile court "may refer" a child for a jury trial to the criminal courts, and upon a verdict of guilty the case is returned to the juvenile court for sentencing. Apparently in practice this means that a judge exercises discretion in referring a case for a jury trial based partly upon the child's motion. See questionnaires returned by the Topeka and Wichita Juvenile Courts, Appendix C, Apx. 21 and 25; and Appendix D. The South Dakota statute states that "the court may on its own motion order a jury of six to try the case." Presumably this is the reason why the Juvenile Courts in Pierre and Sioux Falls answered "no" to the following question: "Are juveniles in delinquency cases entitled *upon request* to a trial by jury in your jurisdiction?" (Emphasis supplied). See Appendix C, Apx. 61 and 65.

[7] The thirty-one cities together with county populations are as follows: Colorado Springs (El Paso County—181,400), Colorado; Denver (Denver County—489,100), Colorado; Pueblo (Pueblo County—117,200), Colorado; District of Columbia—763,956; Topeka (Shawnee County—150,800), Kansas; Wichita (Sedgwick County—356,200), Kansas; Detroit (Wayne County—2,704,600), Michigan; Flint (Genessee County—422,100), Michigan; Grand Rapids (Kent County—391,200), Michigan; Lansing (Ingham County—246,900), Michigan; Billings (Yellowstone County—80,900), Montana; Butte (Silver Bow County—46,300), Montana; Oklahoma City (Oklahoma County—483,600), Oklahoma; Tulsa (Tulsa County—368,-

contains a minimum of two courts, and in the largest states additional cities were chosen to receive questionnaires. In Michigan, for example, four juvenile courts were sent questionnaires and in Texas a total of eight juvenile courts were polled. All 30 juvenile courts in the ten states serve county populations; the District of Columbia Court, of course, serves the city of Washington. Together the 31 courts polled serve a population in excess of 13 million and each year probably receive for processing as many as 75,000 new delinquency cases.[8] By the end of July, 30 questionnaires had been completed and returned, and one (from Madison, Wisconsin) was partially answered through a telephone call with the Juvenile Court's judge, Honorable Ervin Bruner.

The questionnaire was constructed with two purposes in mind. The first was to determine the extent to which jury trials are requested in delinquency cases, the number of cases actually tried by juries, and the correlation, if any, between legal representation on the one hand and jury trials on the other. If, for example, juvenile courts affording jury

[8] In the District of Columbia Juvenile Court, for example, during fiscal years 1969, 1968 and 1967, the court has received new delinquency referrals in excess of 6,000 per year. See 1969 Annual Report, Juvenile Court of the District of Columbia, table 1, page 7. The D. C. Court serves a population of approximately 800,000, and at this referral rate juvenile courts serving a population of 13,000,000 would receive each year more than 80,000 new juvenile cases. Of course, it is not contended that the rate of referral in the District of Columbia is necessarily the same for the other 30 courts in our sample. This calculation is used merely to permit a rough approximation of the number of delinquency cases *probably* processed by the 31 courts studied.

200), Oklahoma; Pierre (Hughes County—11,900), South Dakota; Sioux Falls (Minnehaha County—92,500), South Dakota; Amarillo (Potter County—121,300), Texas; Austin (Travis County—255,100), Texas; Corpus Christi (Nueces County—236,500), Texas; Dallas (Dallas County—1,163,300), Texas; El Paso (El Paso County—349,300), Texas; Fort Worth (Tarrant County—598,500), Texas; Houston (Harris County—1,536,800), Texas; San Antonio (Bexar County—797,200), Texas; Charleston (Kanawha County—239,800), West Virginia; Huntington (Cabell County—108,800), West Virginia; Madison (Dane County—264,300), Wisconsin; Milwaukee (Milwaukee County—1,038,500), Wisconsin; Racine (Racine County—156,300), Wisconsin; Casper (Natrona County—46,000), Wyoming; and Cheyenne (Laramie County—59,500), Wyoming.

trials were faced with overwhelming demands for such trials and had a backlog of untried jury cases, then presumably extending the right to 40 additional states might precipitate serious administrative problems in juvenile courts. If few jury trials were requested, but few children had legal representation, then perhaps the failure to request a jury could be attributable to a lack of counsel. The concern would, of course, be that with increased legal representation there would be a commensurate demand for jury trials. The questionnaire's second major purpose was to learn more about how the mechanics of juvenile jury trials are handled. Thus, the questionnaire inquires about procedures followed in scheduling jury trials, the size of the jury, selection of the jury panel, and whether the trial is public or private. In the balance of this argument we discuss our findings concerning the frequency of jury trial usage. Questionnaire results pertaining to jury trial procedures, size of the jury, etc., are set forth solely in the appendices, as they require little elaboration.[9]

The outstanding fact that emerges from our data is that jury trials in delinquency cases are infrequently demanded, and this is so even in courts where representation by counsel is extensive. Moreover, very few jury cases actually come to trial and, with the possible exception of one court, demands for jury trials have presented no administrative problems whatsoever.

To be specific, we discovered that during the past five and a half years, in 22 out of 26 courts surveyed, cumulative

[9] The completed questionnaires received from the 31 juvenile courts are reproduced in their entirety in Appendix C. Appendix B contains a sample copy of the covering letter which accompanied the questionnaires sent to the 31 courts. Appendix A contains five charts which summarize data contained in the questionnaires. Appendix D is an extensive chart which sets forth the identical material contained in the completed questionnaires arranged in a format to facilitate comparison. Specific references to appendices is not contained in the text or footnotes, except where the data referred to is contained in charts in Appendix A. Data related to specific courts can be located in that court's completed questionnaire (Appendix C) or in the comparative chart (Appendix D), both of which are arranged in alphabetical order by states and then by cities.

requests for jury trials totaled 15 or less.[10] In the remaining five courts in our sample, statistics were unavailable. During the same period, in 26 out of 29 courts the cumulative number of jury trials actually held numbered 15 or less, with statistics unavaiable for two courts in our sample.[11] For example, in Tulsa, Oklahoma, counsel is present in 100% of delinquency cases, but only one jury trial has been requested and held during the past five and one-half years. In the Juvenile Court of Fort Worth, Texas, counsel is also present in 100% of the cases, and only two jury trials have been requested since 1967. The Juvenile Court in Detroit, Michigan, reports that counsel is appointed in 70-80% of its delinquency cases, but thus far in 1970, it has had only four requests for a jury. Between 1965 and 1969 requests for juries were reported as "very few." [12]

In only four juvenile courts in our sample has there clearly been a total during the past five and one-half years of more than 15 jury trial requests and/or more than 15 such

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[10] See Chart IV, Appendix A, Apx. 2.

[11] See Chart V, Appendix A, Apx. 3.

[12] In fact, about one-fifth of the courts in our study have not had a single request for a jury trial in the past five and one-half years, and one-third of the courts have not actually held a jury trial during the same period. Our findings are consistent with frequent predictions that juvenile jury trials will be seldom requested. *E.g.*, *Peyton* v. *Nord*, 437 P.2d 716, 726 (N.M. 1968); Paulsen, *Kent* v. *United States: The Constitutional Context of Juvenile Cases, The Supreme Court Review* 186 (1966); Note, *A Due Process Dilemma—Juries For Juveniles*, 45 N.Dak. L. Rev. 251, 273 (1969). But even if administrative problems did arise with implementation of a jury trial right, surely this could not be reason for withholding its extension to juvenile courts. Last term this Court held that the right to a jury trial extends to misdemeanor trials where the possible penalty exceeds six months. Baldwin v. New York, — U.S. —, 26 L. Ed.2d 437 (1970). While conceding that benefits result from speedy and inexpensive non-jury adjudications, the Court also said:

> We cannot, however, conclude that these administrative conveniences . . . justify denying an accused the important right to trial by jury. . . . . 26 L. Ed. 2d at 443.

This Court has repeatetdly refused to compromise constitutional rights because of administrative convenience and expediency. *E.g.*, Gilbert v. California, 388 U.S. 263 (1967); United States v. Wade, 388 U.S. 218 (1967); Baxstrom v. Herold, 383 U.S. 107 (1966); Fay v. Noia, 372 U.S. 391 (1963); Douglas v. California, 372 U.S. 353 (1963); Gideon v. Wainwright, 372 U.S. 335 (1963).

trials held. The four courts are:[13]

DENVER, COLORADO

	Requests	Trials
1965	4	1
1966	3	1
1967	7	3
1968	9	6
1969	118	13
1970 (mid)	32	13

HOUSTON, TEXAS

	Requests	Trials
1965	about 15	15
1966	"	"
1967	"	"
1968	"	"
1969	"	"
1970 (mid)	"	"

MILWAUKEE, WISCONSIN

	Requests	Trials
1965	0	0
1966	0	0
1967	2	0
1968	5	2
1969	20	6
1970 (mid)	6	2

WASHINGTON, D.C.

	Requests	Trials
1965	[pre-Gault	10
1966	about 5-10	12
1967	per month]	15
1968	[currently	33
1969	about 50-60	45
1970 (mid)	per month]	32

Legal representation in delinquency cases in the foregoing courts is 100% in Houston, approximately 90% in both

[13] The charts contained here are reprinted precisely as filled out by the four courts involved, and are also reproduced in Appendix C.

Milwaukee and Washington, and about 75% in Denver. Since our questionnaire did not inquire whether the number of requests for jury trials posed administrative problems, we telephoned the courts in Denver, Houston and Milwaukee in order to obtain firsthand appraisals of their situations. The responses indicated that either there was not a serious backlog of untried cases, jury or otherwise, or the existing backlog was not due to requests for jury trials.[14] In the District of Columbia—the jurisdiction with which we are most familiar—a backlog of untried jury cases has developed. However a recent management study of the court found that present administrative problems do not result from the length of time it takes to try jury cases, but are due instead to a lack of calendar control.[15] Significantly, the study also notes that existing facilities for jury trials have not become inadequate with an increase in the numbers of such trials requested,[16] and that attorneys do

[14] On August 25, 1970, Charles Rosenbleet, Law Clerk, Public Defender Service for the District of Columbia, spoke by telephone with the following persons: Jack N. Lange, Chief Deputy Clerk of Milwaukee's Juvenile Court; D. H. Baker, Assistant Chief Probation Officer of Houston's Juvenile Court; and Sherron Cadenhead, Administrative Secretary of Denver's Juvenile Court. Mr. Lange stated that jury trial requests and/or the holding of jury trials have in no way contributed to any backlog in Milwaukee's Juvenile Court. In Houston, according to D. H. Baker, there is a serious backlog of untried cases in the Juvenile Court, but the small number of jury trial requests (approximately 15 annually out of a total of 4,000 cases) have not caused any problems. Sherron Cadenhead noted that there was a slight backlog of unresolved delinquency cases, but said that requests for jury trials have not significantly contributed to the problem.

[15] "Jury trials unquestionably take longer than court trials, partly because of the length of time it takes to choose a jury. However, an examination of the juvenile jury calendars of the two judges who handled juvenile jury trials over the 8-month period from January through August, 1969, clearly indicates that the large juvenile jury backlog is not caused by the length of time it takes to try jury cases, but rather was caused by a lack of calendar control creating calendar breakdowns. . . ." Court Management Study, *A Study of the Juvenile Court of the District of Columbia* 85 (April 1, 1970).

[16] "Members of the bench have expressed the need for more jury trial rooms. Nevertheless, the one jury courtroom is used only two days per week for jury trials and the rest of the time by the Chief Judge for initial hearings where jurors are not needed. In addition to the ineffective use of this one jury trial room. . . ." *Id.* at 122.

not demand juries as a delaying tactic.[17]

Overall our data reveals that while lawyer representation of juveniles has increased since the *Gault* decision, this has not meant an increase in the number of jury trials requested. While 24 juvenile courts acknowledged that lawyer representation had increased since *Gault*, and 18 out of 29 courts reported lawyer representation totaling 50% or better,[18] generally, no significant increase was found in the number of jury trials requested. Indeed, this is true of nine juvenile courts which reported the presence of counsel in 100% of their delinquency cases.[19] The only exceptions to this appear to be the juvenile courts in Milwaukee, Denver, and the District of Columbia.

The foregoing data, *Amicus Curiae* submits, provides strong evidence that nationwide recognition of the jury trial right in delinquency cases will not create significant administrative difficulties for the juvenile justice system. The requirements of due process can be accommodated by affording a jury trial in the relatively small percentage of cases where one is sought.

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[17] *Id.* at 86.

[18] See Chart III, Appendix A, Apx. 2.

[19] See data in Appendix C and D related to Austin, Amarillo, Corpus Christi, Fort Worth and San Antonio, Texas; Topeka and Wichita, Kansas; Tulsa, Oklahoma; and Cheyenne, Wyoming.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Supreme Court of North Carolina, and hold that juveniles are constitutionally entitled to trial by jury on the issue of their delinquency in juvenile court proceedings.

Respectfully submitted,

NORMAN LEFSTEIN
LAWRENCE H. SCHWARTZ
Public Defender Service
310 Sixth Street, N.W.
Washington, D.C. 20001

MARTIN MENDELSOHN
Neighborhood Legal Services Program
224 Seventh Street, S.E.
Washington, D.C. 20003

Of Counsel:
PATRICIA M. WALD
2100 M Street, N.W.
Washington, D.C. 20037

APPENDIX A

Chart I

PRIVATE OR PUBLIC JURY TRIALS

	Courts
Private	16
Public	10
Either Private or Public	2
Statistics Unavailable	3

II

COMPOSITION OF JURIES

	Courts
Jury of 12	18
Jury of 6	8
Either 6 or 12	2
Statistics Unavailable	3

III

PERCENTAGE OF DELINQUENCY CASES WITH LEGAL REPRESENTATION MID-1970

	Courts
100%	10
90%	2
75-80%	2
50-60%	4
20-30%	3
10-15%	5
1-7%	3
Statistics Unavailable	2

IV

REQUESTS FOR JURY TRIALS 1965 THROUGH MID-1970

	Courts
0 requests	6
1-5	10
6-15	6
More than 15	4
Statistics Unavailable	5

V

JURY TRIALS HELD
1965 THROUGH MID-1970

	Courts
0 jury trials held	11
1-5	13
6-15	2
More than 15	3
Statistics Unavailable	2

APPENDIX B

Apx. 4

LEGAL AID AGENCY
FOR THE DISTRICT OF COLUMBIA
COURTS BUILDING
310 Sixth Street, N. W.
Washington, D. C. 20001
Telephone (202) 629-6179

Board of Trustees
Samuel Dash, Chairman
Shelia P. Bowers
Paul R. Connolly
Paul E. Miller
Sidney S. Sachs
Fred M. Vinson Jr.

Barbara Allen Bowman
Director
629-5021
Norman Lefstein
Deputy Director
629-5021

June ___, 1970

Mr. _____
_____
_____

Dear Mr. _____:

I recently spoke with you concerning the practice of your Court in providing jury trials in juvenile proceedings.

To assist us in research we are conducting we would appreciate your completing the enclosed questionnaire and returning it in the stamped, self-addressed envelope. We plan to use the results of our research in a friend of the court brief to be filed with the Supreme Court of the United States.

In order for the questionnaire to be used in our brief, it is necessary that we have the completed form in our possession not later than June 26, 1970.

Thank you for your time and assistance.

Sincerely,

Charles Rosenbleet
Law Clerk

Enclosure

APPENDIX C

QUESTIONNAIRE

Your Name: John Salimeno

Position: Probation Counselor

Address: El Paso County Courthouse
Colorado Springs, Colorado 80902

Juvenile Court of: Fourth Judicial District

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.
By motion or orally to the court.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES __x__ NO _____

3(c). If "YES", what is the time limit?
within 10 days of the set hearing

4(a). Is the juvenile jury trial private or public?

PRIVATE __x__ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?
The press and any interested parties may attend.

5(a). What is the composition of the jury?

JURY OF 6 not more than JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

20-25 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES x NO _____

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 2 1968 1

1969 1 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO x

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 2 1968 0

1969 0 1970 (to date) _____

We do not believe the increase for attorney or juvenile jury trials is recourse of the Gault decission, but because of our States new Juvenile Code which went into effect on July 1, 1967.

QUESTIONNAIRE

Your Name: Sherron Cadenhead

Position: Administrative Secretary

Address: City & County Building, Room 154

Denver, Colorado 80202

Juvenile Court of: Denver, Colorado

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES X NO _____

2(b). If "YES", please briefly state the exceptions.

Exceptions are when the allegations of a delinquent act is made to revoke or modify a previously sustained delinquency petition.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Orally.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES X **NO** _____

3(c). If "YES", what is the time limit? On the date of trial setting.

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ **PUBLIC** X

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

5(a). What is the composition of the jury?

JURY OF 6 X **JURY OF 12** _____ **OTHER** _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES _____ NO X

6(b). If "NO", how do the procedures differ?

Selected according to rules of civil procedure rather than criminal.

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

75 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES X NO _____

8(b). How many requests were made in the years listed below?

1965 4 1966 3 1967 7 1968 9

1969 118 1970 (to date) 32

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES X NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 1 1966 1 1967 3 1968 6 (2 children involved in trial).

1969 13 1970 (to date) 13

QUESTIONNAIRE

Your Name: William G. Childress *William G. Childress*

Position: Probation Counselor

Address: Juvenile Probation Department
Pueblo County Judicial Building
Pueblo, Colorado 81003

Juvenile Court of: District Court - Div. D
10th Judicial District

PLEASE NOTE:

I. Deliaquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.
Any of these procedures would be acceptable.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE X PUBLIC _____ (Could be opened to public "by order of the Court" - never has been done.)

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?
Press is informed of results of hearing, age of child, and substance of charges without names and addresses being revealed.

5(a). What is the composition of the jury?

JURY OF 6 X JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

In re: Gault has had little, if any, effect. Revision of Colorado Statues, effective date July 1, 1967, by providing means for court appointed counsel in indigent cases has increased lawyer participation representing juveniles.

YES _____ NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

15%

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) one

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 1

1969 0 1970 (to date) 0 (One scheduled to be heard August 28, 1970)

QUESTIONNAIRE

Your Name: HON. ORMAN W. KETCHAM

Position: Judge of Juvenile Court

Address: 410 E Street, N.W.

Washington, D.C.

Juvenile Court of: District of Columbia

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES X NO _____

2(b). If "YES", please briefly state the exceptions.

Any case in which an adult would not be entitled to jury trial (i.e. beyond control, truancy, etc.) By appellate opinion of U.S. Ct. of App.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Usually orally at time pf pleading (Initial Hearing)

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _X_ NO _____

3(c). If "YES", what is the time limit?

Within 5 days of pleading or entry of appearance of atty, whichever is later

4(a). Is the juvenile jury trial private or public?

PRIVATE _X_ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

Except for jurors, etc.

Yes, press and qualified observers are regularly admitted to all sessions (jury, non-jury, etc.) provided no disclosure of identity.

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 _X_ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES: X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

90 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES X NO _____

8(b). How many requests were made in the years listed below?

See below 1965 _____ 1966 _____ 1967 _____ 1968 ___

1969 _____ 1970 (to date) _____

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES X NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 10 (est.) 1966 12 (est.) 1967 15 1968 33

1969 45 1970 (to date) 32 through March 31, 1970)

SUGGESTED NOTE TO 8 (b): No actual data on the number of requests for jury trial are readily available for those years. Currently, we are getting about 50-60 requests for jury trials per month. Prior to Gault, the number of requests are roughly estimated at about 5-10 per month. Some further indication of the increase in the number of requests since Gault were the number of cases awaiting jury trial on the following dates:

March 31, 1966 - 16
March 31, 1967 - 22
March 31, 1968 - 111
March 31, 1969 - 242
March 31, 1970 - 288

QUESTIONNAIRE

Your Name: Roger L. McCollister

Position: Prosecutor

Address: Shawnee County Juvenile Court

County Court House, Topeka, Kansas 66603

Juvenile Court of: Shawnee County, Kansas

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES x NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO x

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Certification procedure on request of guardian ad litem and at discretion of court.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO __X__ Just that it must be made prior to the commencement of the Juvenile hearing.

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE __X__ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

The press and other persons are admitted only on approval by the respondent and then also with approval of the judge.

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 __X__ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

100 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO x

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 1

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO x

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 1

QUESTIONNAIRE

Your Name: Harold Cook

Position: Intake Supervisor

Address: 525 N. Main

Wichita, Kansas

Juvenile Court of: Sedgwick County

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES _____ NO X

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES X NO _____

2(b). If "YES", please briefly state the exceptions.

In the courts' discretion, a felony type case may be referred to district court for trial by jury, then remanded to juvenile court for final disposition. This is the same as a demand for jury trial except the court is making the request.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

A motion is filed with the assignment judge of the District Court.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO _X_

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC _X_

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 _X_ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

_____%

By law in Kansas, every juvenile alleged to have committed an offense, must be represented by counsel. This is usually by guardian ad litem provided by the court. We have noticed an increase in the number of cases having retained counsel since Gault.

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO _X_

8(b). How many requests were made in the years listed below?

NO EXACT FIGURES AVAILABLE - VERY FEW CASES

1965 _____ 1966 _____ 1967 _____ 1968 _____

1969 _____ 1970 (to date) _____

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO _X_

9(b). How many juvenile jury trials were held in the years listed below?

PROBABLY LESS THAN 5 IN ANY ONE YEAR.

1965 _____ 1966 _____ 1967 _____ 1968 _____

1969 _____ 1970 (to date) _____

QUESTIONNAIRE

Your Name: John Kurland

Position: Register - Wayne County Juvenile Court

Address: 1025 E. Forest Avenue

Detroit, Michigan 48207

Juvenile Court of: Wayne County, Michigan

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES X NO _____

2(b). If "YES", please briefly state the exceptions.

Hearing on violation of probation

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Written request prior to hearing

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO x but see 3 a

3(c). If "YES", what is the time limit?

see 3 a

4(a). Is the juvenile jury trial private or public?

PRIVATE x PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

Judge can permit others in at hea ing--depending on circumstances.

5(a). What is the composition of the jury?

JURY OF 6 x JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

_____%

We have never kept a statistical record. In addition to some privately retained attorneys the court appoints counsel in 70-80 cases a month.

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES X NO _____

8(b). How many requests were made in the years listed below?

SEE BELOW

1965 _____ 1966 _____ 1967 _____ 1968 ___

1969 _____ 1970 (to date) _____

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 1 1968 0

1969 0 1970 (to date) 0

8(b). Actually very few requests for jury trials are made--we probably had about 4-5 this year of which 1 request is pending. Actually after preliminary discussion the requests have been withdrawn.

QUESTIONNAIRE

Your Name: Gerald Thalhammer

Position: Casework Supervisor, Juvenile Probation

Address: 919 Beach St.

Flint, Michigan 48502

Juvenile Court of: _____

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

3(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES X NO _____

2(b). If "YES", please briefly state the exceptions.

In the event a child is charged with a violation of probation, he shall not be entitled to a jury trial.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

A request for a jury trial shall be filed in writing prior to the hearing.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _x_ NO _____

3(c). If "YES", what is the time limit?

The Michigan Juvenile Court rules specify "before the hearing"

4(a). Is the juvenile jury trial private or public?

PRIVATE _x_ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

No exceptions have been made--

5(a). What is the composition of the jury?

JURY OF 6 _x_ JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES __X__ NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES __X__ NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

10 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO _x_

8(b). How many requests were made in the years listed below?

1965 _____ 1966 _1_ 1967 _____ 1968 ___

1969 _1_ 1970 (to date) _____

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO _x_

9(b). How many juvenile jury trials were held in the years listed below?

1965 no records 1966 _1_ 1967 _0_ 1968 _0_

1969 _1_ 1970 (to date) _0_

QUESTIONNAIRE

Your Name: Roger L. Lewis
Director of Court Services
Position:
1501 Cedar St. N.E.
Address:
Grand Rapids, Michigan 49503

Juvenile Court of: Kent County

(PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best YOU can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES XX NO _____

1(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO XX

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Request can be made orally at the time of preliminary hearing, or subsequently in writing.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO XX

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE XX PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

Not usually. If press or others were permitted to observe a proscription would be placed upon identifying persons involved or in repeating specific testimony.

5(a). What is the composition of the jury?

JURY OF 6 XX JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES XX NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES XX NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

5-7 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES XX NO _____

8(b). How many requests were made in the years listed below?

1965 _____ 1966 _____ 1967 _____ 1968 1

1969 1 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES XX NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 _____ 1966 _____ 1967 _____ 1968 1

1969 1 1970 (to date) 0

QUESTIONNAIRE

Your Name: Warren A. Ritter

Position: Director of Children's Services

Address: 608 S. Washington Avenue

Lansing, Michigan 48933

Juvenile Court of: Ingham County

PLEASE NOTE:

I. Deliaquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

orally or by demand for jury

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE X PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

No.

5(a). What is the composition of the jury?

JURY OF 6 X JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

20 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES X NO _____

8(b). How many requests were made in the years listed below?

1965 2 1966 2 1967 2 1968 0

1969 4 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 2 1967 0 1968 0

1969 0 1970 (to date) 0

QUESTIONNAIRE

Your Name: ALBERT THOMAS

Position: CHIEF PROBATION OFFICER

Address: 610 COURTHOUSE

BILLINGS, MONTANA 59101

Juvenile Court of: 13 JUDICIAL DISTRICT
NOTE: YELLOWSTONE CO.

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.
ORALLY

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE X PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?
NO

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _____ NO X

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

5 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 0
1969 0 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0
1969 0 1970 (to date) 0

QUESTIONNAIRE

Your Name: John T. Sheehan.

Position: Chief Probation Officer

Address: Court House.

Butte, Montana.

Juvenile Court of: Silver Bow County, Montana

Second Judicial District.

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO No

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Request in writing of orally

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X ?

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC X

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

5(a). What is the composition of the jury?

JURY OF 6 or 12 JURY OF 12 _____ OTHER _____

At the discretion of the Court

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _____ NO X

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

1 %

In my twenty seven years in this position, we have had only one jury trial in the juvenile Court.

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 none 1966 none 1967 none 1968 none

1969 none 1970 (to date) none

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below? None---

1965 _____ 1966 _____ 1967 _____ 1968 _____

1969 _____ 1970 (to date) _____

John T. Gluck

Chief Probation Officer,

Butte, Montana.

QUESTIONNAIRE

Your Name: HOMER SMITH

Position: Associate District Judge

Address: Room 214, County Courthouse

Oklahoma City, Okla. 73102

Juvenile Court of: JUVENILE DIVISION OF DISTRICT COURT OF OKLAHOMA COUNTY

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.
Either by formal written

3(b). Must the request for a juvenile jury trial be made within a certain time limit?

YES _____ NO X

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC X

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _____ NO X

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

50 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 0 approx. 1966 0 1967 0 1968 2 approx.
1969 3 1970 (to date) 2

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 1
1969 0 1970 (to date) 0

QUESTIONNAIRE

Your Name: G A "Bob" Evans, RSW

Position: Director

Address: 815 S. 25th West Avenue

Tulsa, Okla. 74127

Juvenile Court of: Tulsa County, State of Okla.

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Orally, as a matter of practice.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _x_ NO _____

3(c). If "YES", what is the time limit?

10 days approx.

4(a). Is the juvenile jury trial private or public?

PRIVATE _x_ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

Yes, with permission of the Court the hearing can be made public. Exceptions made in private hearings for interested parties.

5(a). What is the composition of the jury?

JURY OF 6 _x_ JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _____ NO X We require attorneys present at every stage of proceedings--before and after Gault.

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

100 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO __x__

8(b). How many requests were made in the years listed below?

1965 __0__ 1966 __1__ 1967 __0__ 1968 __0__

1969 __0__ 1970 (to date) __0__

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO __x__

9(b). How many juvenile jury trials were held in the years listed below?

1965 __0__ 1966 __1__ 1967 __0__ 1968 __0__

1969 __0__ 1970 (to date) __0__

QUESTIONNAIRE

Your Name: Thomas Saffel

Position: Probation Officer

Address: Hughes County Court House
Pierre, South Dakota

Juvenile Court of: 10th District

PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES _____ NO X

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO _____

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

3(b). Must the request for a juvenile jury trial be made within a certain time limit?

YES _____ NO _____

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES _____ NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES __x__ NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

__50__%

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES x NO _____

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 1

1969 1 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO x

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

QUESTIONNAIRE

Your Name: Jerry Gravette

Position: Probation Officer

Address: 4th District County Court
Minnehaha County

Juvenile Court of: Sioux Falls, South Dakota 57102

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES _____ NO x Cases can be transferred to adult court, but transfer is at the discretion of the Juvenile Court.

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

We request a copy of your brief.

YES _____ NO _____

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO _____

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify. _____

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES _____ NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _____ NO X

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

15 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO _____

8(b). How many requests were made in the years listed below?

1965 _____ 1966 _____ 1967 _____ 1968 ___

1969 _____ 1970 (to date) _____

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 _____ 1966 _____ 1967 _____ 1968 ___

1969 _____ 1970 (to date) _____

QUESTIONNAIRE

Your Name: Dann Barger

Position: Chief Juvenile Probation Officer

Address: Room 502 Potter County Courthouse Amarillo, Texas 79101

Juvenile Court of: Domestic Relations

PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly. Motion by lawyer and the filing of a fee.

3(b). Must the request for a juvenile jury trial be made within any certain time limit? Generally five days prior to trial/

YES X NO _____

3(c). If "YES", what is the time limit?
See above.

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC X No Camaras but the press.

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES ___X___ NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES ___X___ NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

~~100~~ %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 0 1966 1 1967 0 1968 1

1969 0 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 1 1967 0 1968 1

1969 0 1970 (to date) 0

QUESTIONNAIRE

Your Name: Ray Grill

Position: Juvenile Court Attorney

Address: 2515 South Congress

Austin, Texas 78704

Juvenile Court of: Travis County

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES X NO _____

2(b). If "YES", please briefly state the exceptions.

Informal hearing on the issue of waiver of jurisdiction for juveniles over 15 years of age who are charged with a felony.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Motion and payment of a jury fee ($5 in a district court, $3 in a county court)

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES X **NO** _____

3(c). If "YES", what is the time limit?

A reasonable time no less than 10 days prior to the trial.

4(a). Is the juvenile jury trial private or public?

PRIVATE X **PUBLIC** _____

At the discretion of the judge.

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

If a child who has previously been declared delinquent, is charged with a felony, the hearing is open to persons with a legitimate interest, including representatives of the news media.

5(a). What is the composition of the jury?

JURY OF 6 _____ **JURY OF 12** X **OTHER** _____

For district court sitting as juvenile court. (A county court sitting as Juvenile Court would have a jury of 6).

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5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

In civil courts.

6(b). If "NO", how do the procedures differ?

The procedures in juvenile jury selection and adult criminal courts differ only in the number and time of peremptory challenges. In the adult jury selection, each juror is selected and challenged individually. In the juvenile jury (cont'd)

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

100 %

6(b) selection, the peremptory challenges are made after all challenges for cause on the prospective jurors are complete.

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8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

QUESTIONNAIRE

Your Name: Gerald Ceasna

Position: Assistant Director

Address: ~~2310 Gollihar Road~~
Corpus Christi, Texas 78415

Juvenile Court of: Nueces County, Texas

PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

N/A

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Upon motion from counsel for the State or the counsel for juvenile.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES X NO _____

3(c). If "YES", what is the time limit?
Not less than 10 days before the date set for trial.

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC X Local rule provides for closed hearings--State rule-public

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions

N/A

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

N/A

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in udult trials in the adult courts?

YES _x_ NO _____

6(b). If "NO", how do the procedures differ?

N/A

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _x_ NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

100 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES x NO _____

8(b). How many requests were made in the years listed below?

1965 unknown 1966 unknown 1967 1 1968 2

1969 4 1970 (to date) 3

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES x NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 none 1966 none 1967 none 1968 none

1969 none 1970 (to date) 1

QUESTIONNAIRE

Your Name: Charles W. Ferguson

Position: Administrative Supervisor

Address: 4711 Harry Hines Blvd.
Dallas, Texas 75235

Juvenile Court of: Dallas County, Texas

PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES x NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES x NO _____

2(b). If "YES", please briefly state the exceptions.

In hearing to determine whether or not to waive jurisdiction to district court for criminal proceedings.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Motion

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC X

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES _X_ NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _X_ NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

10 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO x

8(b). How many requests were made in the years listed below?
No specific record, statistically---almost none.

1965 _____ 1966 _____ 1967 _____ 1968 _____

1969 _____ 1970 (to date) _____

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO x

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 1

QUESTIONNAIRE

Your Name: M.W. Raley

Position: Chief Probation Officer

Address: 333 Cargill Road

El Paso, Texas 79905

Juvenile Court of: El Paso County

PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

N/A

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Motion by Attorney

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO _x_

3(c). If "YES", what is the time limit?

N/A

4(a). Is the juvenile jury trial private or public?

PRIVATE _x_ PUBLIC _x_ (can be either)

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

No

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 _x_ OTHER _____

5(b). If "OTHER", please specify.

N/A

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES _x_ NO _____

6(b). If "NO", how do the procedures differ?

N/A

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _x_ NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

60 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES x NO _____

8(b). How many requests were made in the years listed below?

1965 1 1966 0 1967 1 1968 0

1969 3 1970 (to date) 10

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES x NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 1

QUESTIONNAIRE

Your Name: David A. Jackson

Position: Asst. Chief Probation Officer

Address: Civil Courts Building

Ft. Worth, Texas 76116

Juvenile Court of: Tarrant County, Texas

PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES x NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO x

2(b). If "YES", please briefly state the exceptions.

_____

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Usually Oral - Can be by motion.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO __X__ (No provision made in statutes.)

3(c). If "YES", what is the time limit?

_____

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC __X__

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

_____

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 __X__ OTHER _____

5(b). If "OTHER", please specify.

_____

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

_____

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

100 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 1 1966 _____ 1967 1 1968 1

1969 _____ 1970 (to date) _____

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 1 1966 _____ 1967 1 1968 1

1969 _____ 1970 (to date) _____

QUESTIONNAIRE

Your Name: D. H. Baker

Position: Assistant Chief

Address: 3540 W. Dallas

Houston, Texas 77019

Juvenile Court of: _____

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES x NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO x

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.
Usual standard way of paying fee

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _x_ NO _____

3(c). If "YES", what is the time limit?
according to law

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC _x_

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 _x_ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

100 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 about same 1966 " 1967 " 1968 "

1969 " 1970 (to date) "

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 15 1966 " 1967 " 1968 "

1969 " 1970 (to date) "

QUESTIONNAIRE

Your Name: Richard Moreno

Position: Chief Probation Officer

Address: 203 W. Nueva St.

San Antonio, Texas 78207

Juvenile Court of: Bexar County, Texas

PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES XX NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO XX

2(b). If "YES", please briefly state the exceptions.

_____

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Defense atty. files short (one sentence form) "Jury Demand"

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ **NO** XX

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ **PUBLIC** XX

Texas statutes provide that the Court may hold private hearings. Present practice here is to hold all hearings, (*bel

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

5(a). What is the composition of the jury?

JURY OF 6 _____ **JURY OF 12** XX **OTHER** _____

*jury or non-jury, in open Court.

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES XX NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES XX NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

100 %

1969 statute provides that juveniles must be represented by legal counsel. Juvenile Court can now appoint counsel for indigents (paid by County) or can order parents, under penalty of contempt, to employ legal counsel for their child.

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES X (slight) NO _____

8(b). How many requests were made in the years listed below?

1965 _____ 1966 _____ 1967 _____ 1968 _____

1969 _____ 1970 (to date) _____ (figures not available)

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES X (slight) NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 1 1968 2-3

1969 6-8 1970 (to date) 4 Approximate Figures

QUESTIONNAIRE

Your Name: Kervin D. Knapp

Position: Chief Probation Officer

Address: 404 1/2 Kanawha Blvd. E.

Charleston, W. Va. 25301

Juvenile Court of: Kanawha County

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

3(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.
Request of defense attorney

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE X PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?
Exceptions made by the Judge

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES _____ NO _____ Jurors are selected from the County Civil Court.

6(b). If "NO", how do the procedures differ?

No set or defined procedures

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

50 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 1

1969 0 1970 (to date) _____

Our only Jury Trial was held in 1963

QUESTIONNAIRE

Your Name: Douglas B. White

Position: Chief Probation Officer

Address: Cabell County Courthouse

Huntington, West Virginia

Juvenile Court of: Cabell County W. Va.

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Following explanation of their rights under the Constitution of N.S. and Constitution of the State of West Virginia

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC _____ Discretion of Judge

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

Discretion of Judge

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

30 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 _____ 1966 _____ 1967 _____ 1968 _

1969 _____ 1970 (to date) _____ Total - 10

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 _

1969 0 1970 (to date) 0 none

QUESTIONNAIRE (Information acquired through telephone conversation)

Your Name: Hon. Ervin Bruner

Position: Judge of Juvenile Court

Address: Room 313-B, City-County Bldg.
Madison, Wisconsin

Juvenile Court of: Dane County

(PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO _____

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO _____

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE _____ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 _____ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES _____ NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES _____ NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

_____%

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO X

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

QUESTIONNAIRE

Your Name: Jack N. Lange

Position: Chief Deputy Clerk

Address: Milwaukee County Children's Court Center
10201 W. Watertown Plank Road
Milwaukee, Wisconsin 53226

Juvenile Court of: Milwaukee County

(PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Orally to court and a written jury demand is filed with the court.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _X_ NO _____

3(c). If "YES", what is the time limit?

10 days after case is noticed for trial.

4(a). Is the juvenile jury trial private or public?

PRIVATE _X_ PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

Press admitted(cannot use juvenile's name)
No other person allowed in court unless permission is granted by the judge.
Our court hearings are closed to the public.

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 _X_ OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as these jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

90 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES x NO _____

8(b). How many requests were made in the years listed below?

1965 none 1966 none 1967 2 1968 5

1969 20 1970 (to date) 6

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES x NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 -- 1966 -- 1967 -- 1968 2

1969 6 1970 (to date) 2

QUESTIONNAIRE

Your Name: JOHN C AHLGRIMM

Position: COUNTY JUDGE

Address: COURT HOUSE

RACINE WISCONSIN

Juvenile Court of: RACINE COUNTY

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Orally at the time of initial appearance
(generally I follow the criminal statutes)

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE X PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

By request to the Court

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

Wisconsin statutes provide for a 6 man jury.
However, I grant a 12 man jury unless waived.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

10 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES X NO _____

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 4

1969 6 1970 (to date) 1

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO 0

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

QUESTIONNAIRE

Your Name: Chas. H. Hancock

Position: Juvenile Probation Officer

Address: City-County Bldg.

Casper, Wyoming

Juvenile Court of: Natrona County - 7th Judicial Dist.

[PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

2(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO XX

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.
Upon application of counsel.

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES _____ NO X -except reasonable notice

3(c). If "YES", what is the time limit?

4(a). Is the juvenile jury trial private or public?

PRIVATE X PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?
Trials are private, No exceptions.

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 XX OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES X NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES X NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

80 % Always where there is a possibility of a committment however remote.

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO X

8(b). How many requests were made in the years listed below?

1965 0 1966 _____ 1967 _____ 1968 _____

1969 _____ 1970 (to date) 1

Will average 1 per year. Usually settled otherwise.

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES X NO _____

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 1

This is for the State of Wyoming. So far only 1 has ever been held. This was this year.

QUESTIONNAIRE

Your Name: John W. Pattno

Position: County and Prosecuting Attorney

Address: Suite 203 Teton Building

Cheyenne, Wyoming

Juvenile Court of: Laramie County, Wyoming

(PLEASE NOTE:

I. Delinquency, as used in this questionnaire, includes those juveniles charged with law violations or in petitions alleging runaway, truancy, beyond control, etc. Delinquency does not include cases of dependency, neglect, or trials involving adults in non-support cases.

II. In those questions where statistics are requested: if exact figures are unavailable, please estimate as best you can. We appreciate that in several instances the questionnaire asks for data which is not normally maintained by juvenile courts.]

1. Are juveniles in delinquency cases entitled upon request to a trial by jury in your jurisdiction?

YES X NO _____

3(a). If juveniles are entitled to such a jury trial, are there any exceptions as to types of cases in which the right to a jury is denied?

YES _____ NO X

2(b). If "YES", please briefly state the exceptions.

3(a). How is the request for a juvenile jury trial made (e.g., motion, certification, orally, etc.)? Please explain briefly.

Motion

3(b). Must the request for a juvenile jury trial be made within any certain time limit?

YES X NO _____

3(c). If "YES", what is the time limit?

At time of pleading

4(a). Is the juvenile jury trial private or public?

PRIVATE X PUBLIC _____

4(b). If the juvenile jury trial is private, are exceptions made for the press and any other persons and under what conditions?

No

5(a). What is the composition of the jury?

JURY OF 6 _____ JURY OF 12 X OTHER _____

5(b). If "OTHER", please specify.

6(a). Are the jurors sitting in juvenile jury trials selected through the same procedures as those jurors sitting in adult trials in the adult courts?

YES x NO _____

6(b). If "NO", how do the procedures differ?

7(a). Since the U.S. Supreme Court's decision of In re Gault (May 15, 1967), has there been an increase in the number of lawyers representing juveniles in delinquency cases?

YES x NO _____

7(b). At present, in approximately what percentage of cases do lawyers represent juveniles in delinquency cases?

100 %

8(a). Since Gault, has there been an increase in the number of requests for juvenile jury trials?

YES _____ NO x

8(b). How many requests were made in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

9(a). Since Gault, has there been an increase in the number of actual juvenile jury trials held?

YES _____ NO x

9(b). How many juvenile jury trials were held in the years listed below?

1965 0 1966 0 1967 0 1968 0

1969 0 1970 (to date) 0

APPENDIX D

FILE COPY

Supreme Court, U.S.
FILED
SEP 19 1970
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 128

IN RE BARBARA BURRUS, et al.,
Petitioners.

On Writ of Certiorari to the Supreme Court of North Carolina

Brief for the People of the State of California Amicus Curiae in Support of Respondent

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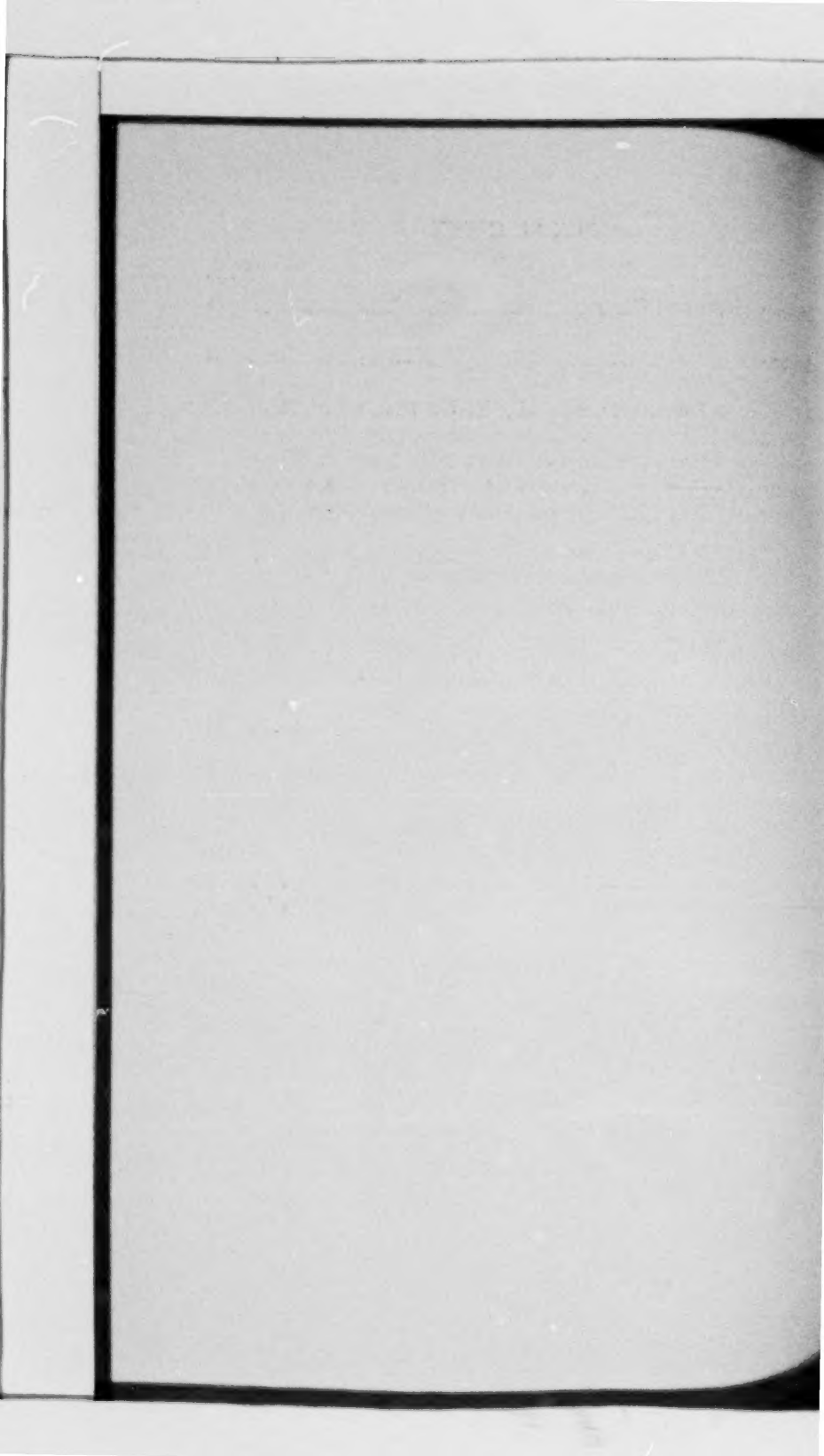

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 128

IN RE BARBARA BURRUS, et al.,
Petitioners.

On Writ of Certiorari to the Supreme Court of North Carolina

Brief for the People of the State of California Amicus Curiae in Support of Respondent

INTEREST OF AMICUS CURIAE

The People of the State of California have a substantial interest in the question of whether a juvenile is entitled to a jury trial in a juvenile court proceeding to determine the facts upon which jurisdiction of the juvenile court is based. Under the California Juvenile Court Law,[1] there is no provision for a jury trial; the determination of the facts

1. Calif. Welf. & Inst. Code §§ 500-945. See also Welf. & Inst. Code §§ 1000-1258 (Institutions for Delinquents); Welf. & Inst. Code §§ 1700-1861. (The Youth Authority)

which bring a juvenile within the jurisdiction of the court is made by the juvenile court judge.

Under California law, the jurisdiction of the Juvenile Court is exclusive for children under 16 (Calif. Welf. & Inst. Code §§ 604(a), 707); it is initially exclusive for children between 16 and 18, with transfer to the criminal courts in the discretion of the judge pursuant to statutory procedures (Calif. Welf. & Inst. Code §§ 604(a), 707); and it is concurrent for minors between 18 and 21 (Calif. Welf. & Inst. Code §§ 600-602, 604(b)). In the latter case, although the county probation officer or district attorney may have initial discretion in selecting the court, the final determination is the responsibility of the juvenile court judge or the criminal court judge. Calif. Welf. & Inst. Code §§ 604(b), 707.

California Welfare and Institutions Code Section 701 provides that the judge must first conduct a hearing to determine whether the minor (a person under 21) is a neglected, potentially delinquent or delinquent child, as described by sections 600, 601 or 602 of the Welfare and Institutions Code.[2]

If the court makes a finding that the minor comes within its jurisdiction, it then conducts a dispositional hearing (Welf. & Inst. Code §§ 702, 706). The court has various alternatives in treating the minor, some of which are

2. Under section 600, a dependent child of the court is one who is without a parent or guardian to exercise care or control; who is destitute or not provided with the necessaries of life, or whose home is unfit; or who is physically dangerous because of deficiency or disorder. Under section 601, a ward of the court is one who is generally speaking, beyond his parents' control, an habitual truant, or in danger of leading *inter alia*, an immoral life. Under section 602, a ward of the court is one who violates a law, or a court order under section 601.

dependent on the section giving rise to jurisdiction. See Calif. Welf. & Inst. Code §§ 725, 726, 727, 730, 731.

Among the alternatives for minors coming within section 602 and for those within section 601 if further procedures, including a hearing, have been taken, is commitment to the California Youth Authority (Welf. & Inst. Code §§ 730, 731, 777) which has jurisdiction over educational training and treatment institutions maintained as correctional schools. See Welf. and Inst. Code § 1000. The court may also utilize the resources of the Department of Mental Hygiene, the Youth Authority, and public or private agencies or doctors for diagnostic medical, or psychiatric services, treatment or recommendations. See Calif. Welf. & Inst. Code §§ 703, 704, 705, 739, 740, 741. In any case, the commitment or disposition made by the juvenile court may be reviewed and modified at any time. See Welf. & Inst. Code §§ 729, 775-779.

The California Juvenile Court Law establishes a comprehensive and carefully planned system for the rehabilitation, treatment, and when necessary, for the incarceration of minors found to need such care after careful and complete adjudicatory and dispositional hearings. We believe that the provision for hearing by a juvenile court judge rather than a jury fully protects the child's rights to due process in such proceedings.

We appear before this Court as amicus curiae to uphold the validity of such a legislative standard established as part of comprehensive proceedings, which are neither criminal nor civil, but *sui generis,* designed to deal with the problems of juvenile delinquency, potential delinquency and neglect in a rational and humane manner.

ARGUMENT

A Legislative Decision That a Judge Rather Than a Jury Shall Be the Finder of Fact in a Juvenile Proceeding, Whether or Not the Adjudication Is Concerned With Conduct Which Violates the Criminal Law, Does Not Violate the Rights of Juveniles Under the Sixth and Fourteenth Amendments.

Petitioners in this case were brought before a District Court in North Carolina upon petitions alleging each to be a child "in need of the care, protection or discipline of the State" because of acts in violation of the law, and requesting that the court hear and determine the case and if necessary give each child "such oversight and control as will promote the welfare of such child and the best interest of the state." A 2-53. Following hearings at which jury trials were requested and denied, the court made findings of fact which brought petitioners under the jurisdiction of the court. The disposition of each child, after modification on appeal to conform to North Carolina law, was probation, with conditions, for either 12 or 24 months.[3]

Petitioners argue that because they were "subject to incarceration for periods of from six to ten years," the conclusion that they have a constitutionally guaranteed right to jury trial is compelled by the decisions of this Court establishing that juveniles must be afforded due process, *In re Gault,* 387 U.S. 1 (1967), and that adults

---

3. Such probation may be modified or revoked during the probationary period at which time the child could be committed or other disposition made. See, *e.g.* A-51; A343-44; N.C. Gen. Stat. §§ 110-29, 110-32 (Brief for Petitioners at 48-52). One of the dispositional alternatives is commitment to the Carolina Board of Juvenile Corrections for assignment to an appropriate facility for an indefinite term not extending beyond the child's eighteenth birthday unless the child is engaged in a vocational training program. Release may be made at any time the Board determines that the child is ready. N.C. Gen. Stat. 7A-286 (4) (Brief for Petitioners at 40-41).

have a right to a jury in trials which may result in a "serious infringement of personal liberty." *Duncan v. Louisiana*, 391 U.S. 145 (1968); *Bloom v. Illinois*, 391 U.S. 194 (1968). Brief for Petitioners at 9. We submit that neither the decisions of this Court nor reasoned analysis compel such a conclusion. The rigid application of adult criminal trial procedure to juvenile proceedings will result not in greater protection of the juvenile but in the destruction of a viable and developing juvenile court system.

A. JUVENILE COURT PROCEEDINGS ARE NEITHER "CRIMINAL" NOR "CIVIL" BUT ARE UNIQUE PROCEEDINGS WHICH REQUIRE PROCEDURES APPROPRIATE TO THE SPECIAL PROBLEMS INVOLVED.

In *Kent v. United States*, 383 U.S. 541 (1966), and *In re Gault, supra*, this Court established the principle that a juvenile, no less than an adult, is entitled to due process in any proceeding which may result in the denial of substantial benefits or in his incarceration for a significant period of time. In *Kent*, interpreting the District of Columbia Juvenile Court Act "in the context of constitutional principles," this Court held that the exercise of the Juvenile Court's discretion to waive its exclusive jurisdiction was so "critically important" to the minor that he "was entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision." *Id.* at 577. The reason this waiver of jurisdiction was so critically important was because of the special rights and immunities conferred on the minor by statute:

> "He . . . is shielded from publicity. He may be confined, but with rare exceptions he may not be jailed along with adults. He may be detained, but only until he is 21 years of age. The Court is admonished by the statute

> to give preference to retaining the child in the custody of his parents 'unless his welfare and the safety and protection of the public cannot be adequately safeguarded without . . . removal.' The child is protected against consequences of adult conviction such as the loss of civil rights, the use of adjudication against him in subsequent proceedings, and disqualification for public employment." *Id.* at 556-57.

Although basing its decision on the benefits conferred, the court in *Kent* expressed some misgivings about the actual performance of Juvenile Courts, and raised doubts as to whether this performance "measured well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties available to adults." *Id.* at 555.

In *Gault*, this Court reached some of the questions raised but not answered in *Kent*, and held generally that procedural due process could not be denied a juvenile merely by classifying juvenile court proceedings as "civil" in nature. This Court went on to hold that certain procedural protections were essential requirements of due process in an adjudication hearing which could result in the incarceration of the juvenile: Notice, right to counsel, right to confront witnesses, and right against compelled self-incrimination.

The doubt expressed in *Kent* as to the performance of the juvenile court system was expressed in stronger terms in *Gault*. Where the emphasis in *Kent* was on the benefits of the juvenile court system which were taken from the child without "due process," the emphasis in *Gault* appeared to shift to the deficiencies of the juvenile court system. "The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were

discarded in Gerald's case." *Id.* at 29.[4] Even so, this Court reiterated the view put forth in *Kent, supra* at 562, that all the requirements of a criminal trial are not included in the due process required for juvenile proceedings:

> "'We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment.'" *In re Gault, supra* at 30.

Subsequent to *Gault*, this Court again considered the content of constitutional "due process" in juvenile court proceedings. *In re Winship*, 397 U.S. 358 (1970). In *Winship*, this Court held first that in a criminal trial due process required that guilt be established by proof beyond a reasonable doubt, then determined that juveniles were constitutionally entitled to the same proof standard in juvenile court proceedings when charged with violation of a criminal law. "The same considerations which demand extreme caution in fact-finding to protect the innocent adult apply as well to the innocent child." *Id.* at 365. This Court noted that affording juveniles the protection of proof beyond a reasonable doubt would not risk destruction of

---

4. The apparent shift in emphasis may perhaps be explained by the fact that Gerald Gault was "incarcerated" in a state "industrial school" for the remaining five years of his minority, while the adult criminal would have been fined up to $50 or imprisoned in jail for up to two months. Morris Kent, on the other hand, was sentenced in regular criminal proceedings (with the full panoply of due process protection) to from 30 to 90 years in prison. Had he been treated as a juvenile, his "incarceration" would have terminated at majority, again a period of five years. For a perceptive discussion of the basically inconsistent approach of these cases, see Welch, *Kent v. United States* and *In re Gault: Two Decisions in Search of a Theory*, 19 Hastings L.J. 29 (1967).

beneficial aspects of the juvenile process, including the "informality, flexibility, or speed of the hearing at which the fact-finding takes place." *Id.* at 366. This Court found, in summation, "the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*—notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination." *Id.* at 368.

Thus, in *Winship* as in *Gault*, this Court held not that all criminal procedure is applicable to juvenile court proceedings but rather that due process requires a fair adjudication procedure and that this requirement cannot be evaded by a "civil" label. We are fully in accord with this flexible approach; even the basic non-criminal character of juvenile proceedings does not justify arbitrariness or a denial of fundamental fairness. At the same time, it makes little sense to turn this Court's rejection of the "civil" classification into a mandate to impose a criminal label, and thus procedure, on proceedings which remain different in function, essentially non-criminal in concept and approach, and which are designed to deal with individuals who have problems, potential, and a commitment from society significantly different from adults.[5]

Juvenile proceedings are a unique response to a problem which is exceedingly complex and, while related in some aspects to the problems of the criminal law, covers areas of concern solely related to juveniles such as neglect, tru-

5. The history and philosophy of the Juvenile Court system were reviewed in *Gault* and *Kent*. See also, The President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report:* Juvenile Delinquency and Youth Crime 2-7 (1967).

ancy, and incorrigibility. It has been pointed out that the question of the state's concern for and jurisdiction over children must be answered not by the criminal law, but by a due process theory that takes account of the qualitative differences of juvenile law from both criminal and civil proceedings.

"It is submitted that the Court's decision in *Gault* has left latitude for making such a distinctive constitutional determination in a 'truly noncriminal' context." Welch, *op. cit. supra*, note 4, at 38.

"If criminal law procedure importation were to proceed apace from the *Gault* decision in total disregard of any constitutional effect for the special rights and immunities of juvenile law, as Justice Harlan predicts, it seems inevitable that 'rigid procedural requirements may inadvertently . . . [serve] to discourage . . . efforts to find more satisfactory solutions for the problems of juvenile crime . . . and development of the systems of juvenile courts.[6] Were the Supreme Court to adopt standards for the measurement of juvenile court due process which make qualitative differences in the effects of a delinquency determination and special treatment essential ingredients, it would ensure a potent incentive for a more physically and functionally valid juvenile law system. As it is. the pressure to be very different from the criminal system is lessened proportionately to the degree of 'essential' procedural identity between the two systems." *Id.* at 39.

California, like North Carolina, has established a statutory system for dealing with the problems posed by juvenile crime, potential crime, various unique juvenile problems and neglect or need. The non-criminal nature of juvenile court proceedings is unequivocally stated in section 503 of the California Welfare and Institutions Code:

---

6. Footnote omitted; quotation from *In re Gault* at 77.

> "An order adjudging a minor to be a ward of juvenile court shall not be deemed a conviction of crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding."

The California courts have consistently reiterated the view that juvenile proceedings are not criminal in nature but are proceedings in which the state seeks to relieve the minor of criminal responsibility and give him direction and rehabilitation. *See, e.g., People v. Dotson,* 46 Cal.2d 891, 895, 299 P.2d 875 (1956); *In re Castro,* 243 Cal.App.2d 402, 406-07, 52 Cal. Rptr. 469 (1966).

Under the California Juvenile Court Law, the court has a wide range of dispositional alternatives to serve these goals whether the child is neglected (§ 600), potentially delinquent (§ 601) or has committed acts which are crimes (§ 602). If the minor comes within section 602 of the Welfare and Institutions Code or if he is within section 601 and further proceedings have been undertaken, one of the alternatives available to the court is commitment to the California Youth Authority. See Welf. & Inst. Code §§ 730, 731, 777.[7] The California Youth Authority is an administrative agency with jurisdiction over educational training and treatment institutions maintained as correctional schools.

> "The Authority shall have charge of the persons committed or confined in each such institution, and shall provide for their care, supervision, education, training, employment, discipline, and government. It shall exercise its powers toward the correction of their

7. In 1958, Youth Authority commitments on initial petitions were made in 2.2% of Juvenile Court cases. Report of the Governor's Commission on Juvenile Justice, Part 2, at 19. We are informed by the Bureau of Criminal Statistics that similar commitments were made in about 1.3% of the cases in 1967, the most recent year for which such statistics are presently available.

faults, the development of their character, and the promotion of their welfare." Calif. Welf. & Inst. Code § 1004.

Commitment to the Youth Authority does not necessarily mean "incarceration" until majority. The Youth Authority may parole the minors under its charge, and may grant "honorable discharge" or leave of absence. Calif. Welf. & Inst. Code §§ 1176-79. Where a minor proves to be so incorrigible or so incapable of rehabilitation as to render his retention detrimental, the minor may be returned to court, where if over 16, he may be certified to the adult criminal court for criminal trial with all constitutional protections. Calif. Welf. & Inst. Code §§ 780, 707. While commitment is a dispositional alternative, the court has available all those dispositions available for both neglected or potentially delinquent children, including probation with or without wardship, placement with an individual or agency for custody and care, or placement in a juvenile home, ranch or camp. Calif. Welf. & Inst. Code §§ 725-30. The court also may order medical diagnostic or psychiatric services utilizing both public and private facilities. Calif. Welf. & Inst. Code §§ 703, 704, 705, 739-41.

Finally, the court may review and modify the commitment or disposition at any time. Calif. Welf. & Inst. Code §§ 729, 775-79. It should be noted that commitment to a juvenile home or to the Youth Authority for placement in a correctional school is not limited to cases where a "crime" is charged as the basis for juvenile court jurisdiction, nor is commitment to the Youth Authority required even if jurisdiction is based on an act which would be a felony if committed by an adult. The disposition of the child is based on a full review of his background and problems including the specific behavior on which jurisdiction is based.

Disposition is not designed to punish the child for this behavior; the proceedings of the juvenile court are essentially remedial. *In re Dennis M.*, 70 Cal.2d 444, 456-57, 75 Cal.Rptr. 1, 8, 450 P.2d 296, 303 (1969).

As pointed out by the Supreme Court of California, juvenile proceedings so characterized have some apparent similarities to proceedings for the involuntary commitment of mentally ill persons and narcotics addicts. *In re Dennis M., supra,* 70 Cal.2d at 457, n 11. This Court, while demanding that due process be accorded as a constitutional requirement in such special proceedings, has not required all the procedures of a criminal trial even though loss of liberty is not just a possibility but an inevitable result. See *Specht v. Patterson,* 386 U.S. 605 (1967); *Minnesota v. Probate Court,* 309 U.S. 270 (1940). Compare *In re Raner,* 59 Cal.2d 635, 381 P.2d 638, 30 Cal.Rptr. 814 (1963). Similarly, the rationale of special juvenile proceedings is that the juvenile is to be trained and rehabilitated, not punished. His behavior is a product of his immaturity, and his delinquency may be caused or aggravated by factors over which he has little or no control. In short, he is not being punished for his conduct; his conduct is symptomatic of a problem of growth and development which may be amenable to treatment, even where he must be incarcerated for the protection of himself or of society.

> "It is well settled that the Court must give the widest deference to legislative judgments that concern the character and urgency of the problems with which the State is confronted. Legislatures are, as this Court has often acknowledged, the 'main guardian' of the public interest, and, within their constitutional competence, their understanding of that interest must be accepted as 'well-nigh' conclusive. *Berman v. Parker,* 348 U.S. 26, 32 [1964]." *In re Gault, supra,* at 70 (Harlan, J., concurring and dissenting).

The fundamental issue is, of course, to what extent this deference is given where constitutional issues of procedural protection are involved. While the basic non-criminal character of juvenile proceedings does not justify arbitrariness or a denial of fundamental fairness, we urge that it does justify judicial deference to legislative judgment which establishes the procedure at issue here as part of a detailed statutory scheme enacted specifically to provide fundamental fairness in proceedings undertaken in the child's best interests.

B. TRIAL BY JURY IS NOT CONSTITUTIONALLY REQUIRED AS ESSENTIAL TO DUE PROCESS IN A JUVENILE CASE.

The California Juvenile Court Law was extensively revised in 1961 as a result of recommendations made by the Governor's Special Study Commission on Juvenile Justice in the course of a study of all phases of juvenile justice in California. The recommendations made were the "product of an extensive conscientious process of review and reevaluation in which numerous local juvenile and judicial officials throughout the state actively participated." Report of the Governor's Special Commission on Juvenile Justice, Part I, at 10. The procedural scheme recommended by the commission and accepted by the legislature did not provide for jury trial. Despite significant changes subsequent to *Gault*, this particular procedural requirement has remained unchanged.[8] We submit that reasoned analysis supports the legislative judgment.

In its 1961 study, the California Commission commented on jury trial in juvenile cases:

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8. As noted by the California Supreme Court in *In re Dennis M.* at 453, the California legislature has been fully responsive to *Gault* by adopting numerous amendments designed to implement *Gault*. See Calif. Stats. 1967, ch. 507, 1355, 1356.

> "The generally held view, shared by the commission and all of California's juvenile court judges, is that the jury system is incompatible with the philosophy of the juvenile court law." Report of the Governor's Special Study Commission on Juvenile Justice, Part II, at 19.

A survey of 25 judges in the largest California counties revealed all were opposed to such trials, their comments suggesting that jury trials would be in conflict with juvenile court philosophy and would destroy the protective purpose of the court. It was noted that the publicity attracted would go far to eliminate the confidentiality necessary for effectiveness. *Ibid.*

To a similar effect is the discussion by the President's Task Force on Juvenile Delinquency in 1967:

> "Most States do not provide jury trial for juveniles. Even Illinois, New York, and California, which have recently revised their juvenile court laws to increase procedural safeguards for the child, have not extended the right to trial by jury. There is much to support the implicit judgment by these States that trial by jury is not crucial to a system of juvenile justice. As this report has suggested, the standard should be what elements of procedural protection are essential for achieving justice for the child without unduly impairing the juvenile court's distinctive values.
>
> "As has been observed, 'A jury trial would inevitably bring a good deal more formality to the juvenile court without giving the youngsters a demonstrably better fact-finding process than trial before a judge.' The presence of a jury tends in a number of ways to contribute to an atmosphere of formality. In part, formality becomes itself an end insofar as it helps instill in jurors a sense of the seriousness and solemnity of their duties. Moreover, the presence of a jury affects the

whole process of dealing with evidence. Much of the reason for many restrictive rules of evidence, which typically give rise to narrow contentiousness over marginal issues, stems from the felt need to protect against a jury's susceptibility to prejudice and irrelevancies and its limited ability to distinguish between the more and less probative. And when a jury is the object of an attorney's persuasion, he naturally responds to what he believes will most effect it, with the usual result an emphasis on staging, effect and emotion rather than a more businesslike presentation.

"A further consideration arguing against a jury arises out of the typically loose and general statutory formulations of the behavior that may subject a youth to juvenile court jurisdiction, particularly insofar as the conduct includes acts other than those that would be criminal if engaged in by adults: *i.e.*, incorrigibility, need for care and supervision, truancy. Inequality and disparate decisions are invited by giving these formulae to *ad hoc* juries for application rather than to judges, who tend inevitably to develop concrete meanings for such terms. If a jury were required, the appropriate standard of proof (beyond a reasonable doubt, preponderance of the evidence, and so forth) would become a more critical issue.

"As Mr. Justice Cardozo noted, it would not appear that a fair and enlightened system of justice is impossible without jury trials. 'This too might be lost, and justice still be done.' " The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* at 38 (1967).

The courts and commentators which have considered the issue have disagreed on its resolution, with the better reasoned opinions, in our view, taking the position that a jury

trial is not an essential part of due process in a juvenile proceeding.[9]

This issue was analyzed at length in *Commonwealth v. Johnson*, 211 Pa. Super. 62, 234 A.2d 9 (1967). The Pennsylvania appellate court reached the conclusion that jury trial is not a requirement of due process in juvenile proceedings.

> "In short, those who find in *Gault* the obliteration of any distinctions between the treatment accorded juveniles and adults are reaching a conclusion that is unwarranted. It is clear to us that the Supreme Court has properly attempted to strike a balance by injecting procedural orderliness into the juvenile court system. . . . It has not suggested that we discard the flexibility which has long been the hallmark of juvenile courts, but that we temper it with certain procedural safeguards." 234 A.2d at 15-16.

The court viewed *Gault* as an

> "invitation to formulate a court procedure which will combine the best aspects of juvenile and criminal court procedure into an amalgam which will offer the juvenile the best of both worlds." *Id.* at 16.

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9. *Compare Dryden v. Commonwealth*, 435 S.W.2d 457 (Ky. 1968); *Shone v. State*, 237 A.2d 412 (Maine 1968); *DeBacker v. Brainard*, 183 Neb. 461, 161 N.W.2d 508, 519 (1968) (minority opinion); *Estes v. Superior Court*, 438 P.2d 205 (Wash. 1968); *In re Agler*, 15 Ohio App.2d 240 (1968); and *Commonwealth v. Johnson*, 211 Pa. Super. 62, 234 A.2d 9 (1968) *with Nieves v. United States*, 280 F.Supp. 994 (S.D.N.Y. 1968); and *Peyton v. Nord*, 78 N.M. 717, 437 P.2d 716 (1968). See also, *In re Dennis M.*, 70 Cal.2d 444, 456 (1969) (by implication—jury trial not required). Commentators are similarly divided. *Compare Welch, op. cit. supra;* Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. L. Rev. 547, 559 (1957) *with Antieau, Constitutional Rights in Juvenile Courts*, 46 Cornell L.Q. 387, 399-400 (1961); Dorsen & Rezneck, *Gault and Juvenile Law*, 1 Family Law Q. No. 4; 1, 22-23 (1967). See generally, Annot. 100 A.L.R.2d 1241 (1968). The jurisdictions providing for jury trial in juvenile cases are listed in Petitioners' Brief at 29-30, n. 29.

The court reviewed the responsibilities of the juvenile court judge, finding, in essence, that he must be more than a trier of fact.

> "[H]e must, in a unique manner, establish a relationship that will permanently alter the behavior patterns of the child." *Id.* at 17.

The insertion of jury trials would sorely limit the juvenile court judge in carrying out his special tasks. *Ibid.*

> "[W]e find that the Supreme Court recognized that juvenile courts, while acting within the constitutional guarantees of due process, must, nonetheless, retain their flexible procedures and techniques. The institution of jury trial in juvenile court, while not materially contributing to the fact-finding function of the court, would seriously limit the court's ability to function in this unique manner, and would result in a sterile procedure which could not vary to meet the needs of delinquent children." *Ibid.*

Johnson was decided before this Court's decision in *Duncan v. Louisiana,* 391 U.S. 145 (1968), made the right to jury trial an element of due process applied to state criminal trials. The highest court of Kentucky considered the effect of *Duncan,* but nonetheless followed the Pennsylvania court in *Johnson.* In *Dryden v. Commonwealth,* 435 S.W.2d 457 (Ky. 1968), the court was unwilling to equate a juvenile proceeding with a criminal trial even though the basis might be conduct which would be a crime if committed by an adult. The court noted that if institutionalization may be the result, "it can make no sensible difference whether he is charged with having committed a criminal offense, of truancy, of habitual disobedience to his parents, or of being dependent, neglected, needy or abandoned." *Id.* at 461. The court continued:

> "A jury trial, with all the clash and clamor of the adversary system that necessarily goes with it, would certainly invest a juvenile proceeding with the appearance of a criminal trial, and create in the mind and memory of the child the same effect as if it were. In our opinion there is more to be lost than gained. Certainly we cannot regard a jury as a better, fairer, more accurate fact-finder than a competent and conscientious circuit judge." *Ibid.*

Petitioners cite the decisions of this Court in *Duncan v. Louisiana, supra, Bloom v. Illinois, supra,* and *Baldwin v. New York,* 399 U.S. 66 (1970) which hold generally that a defendant in a criminal trial or criminal contempt proceeding has the right to trial by jury if the crime is "serious," that is, may be punishable by incarceration for a period longer than six months. Petitioners argue that since they were subject to periods of institutionalization of from six to ten years and because the adjudicatory phase of juvenile proceedings under North Carolina law is materially indistinguishable from the ordinary criminal case, that due process as defined for juveniles in *Gault* and *Winship* includes the right to trial by jury.

We cannot agree that due process requires a jury trial in juvenile proceedings which may or may not involve "criminal" conduct; may or may not result in incarceration; and do not involve "crime in the ordinary sense; . . . a public wrong which is punishable by fine or imprisonment or both." *Bloom v. Illinois, supra,* at 201. We submit that petitioner's argument utterly fails to take into account the fact that a rigid application of *Duncan* and *Bloom* simply does not fit the realities of the juvenile court system. They argue, simply, that a jury trial must be provided whenever a juvenile is subject to incarceration, apparently for more than six

months. In juvenile cases, however, commitment for a potentially longer period may be order in cases where an an adult would not be entitled to a jury trial and in cases not involving crimes at all.

Petitioners avoid facing this obvious difficulty with their analysis merely by stating, "This case does not raise the question of the right to jury trial in juvenile proceedings which do not involve a charge of violation of state criminal laws." Brief for Petitioners at 11, n. 10. This case cannot avoid facing this problem, as long as potential commitment is argued to be the factor which underlies the right to trial by jury.

If the right to jury trial is based on potential commitment, then we must ask juries to find juveniles "guilty" of conduct which is not criminal and which is not subject to precise definition. As pointed out by the President's Task Force on Juvenile Delinquency as quoted, *supra*.

> "Inequality and disparate decisions are invited by giving these formulae to *ad hoc* juries for application rather than to judges, who tend inevitably to develop concrete meanings for such terms."

In the statutory scheme established in California, and, as we read the statute, in North Carolina, when commitment is ordered, it is not determined by the conduct charged, but on the basis of factors developed in the dispositional hearing. The conduct serves only to give the court jurisdiction to proceed. This is the truly important distinction between adult and juvenile cases.[10]

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10. It was apparently the "tokenism" of this dispositional hearing that concerned this Court in *Gault:* "The traditional ideas of Juvenile Court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did—was it a prank of adolescence or a

"The fact of exposure to incarceration at all, a qualitative consideration, seems, in light of the fourteenth amendment's specific concern for preserving individual liberty, to be an appropriate basis for prescribing procedural safeguards aimed at ensuring the reliability of determinations that state intervention is warranted. The right to counsel, reliable evidence, standard of proof, cross-examination, and transcript of record all relate to reliability. Other procedural aspects of criminal prosecution, such as probable cause for apprehension, the right to bail, the right to trial by jury, the privilege against self-incrimination and exclusionary rules for evidence obtained by trespassory searches and seizures, should not be applied verbatim to juvenile proceedings without due consideration of qualitative differences in incarceration and other differences in juvenile law.

"Rather than holding that qualitative aspects of incarceration are 'of no constitutional consequence' and that other statutory 'rights and immunities' afforded the juvenile are 'in no way involved,' the cause of juvenile correction would be better served by a holding that made these 'differences' essential to the constitutionality of carefully tailored 'noncriminal' procedures, while insisting upon the realization of these differences *in fact* in individual cases through appropriate review by appeal and habeas corpus." Welch, *op. cit. supra*, at 35.

In *Winship*, this Court applied the criminal standard of proof to juvenile proceedings in which a "crime" was

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brutal act threatening serious consequences to himself or society unless corrected? Under traditional notions, one would assume that in a case like that of Gerald Gault, where the juvenile appears to have a home, a working mother and father, and an older brother, the Juvenile Judge would have made a careful inquiry and judgment as to the possibility the boy could be disciplined and dealt with at home, despite his previous transgressions." (Footnotes omitted.) *Id.* at 28.

charged because, among other reasons, to do so would not disturb the policy that juvenile proceedings are confidential nor affect the informality, flexibility, or speed of the adjudicatory hearing. The same is obviously not true of trial by jury. Petitioners "simply do not understand how formality can be considered a vice. The rules of evidence which would be applied in any proceeding involving a jury represent our law's way of ensuring the most advantageous circumstances for dispassionate and objective determination of factual issues." Brief for Petitioners at 18. The appropriate rules of evidence are not at issue here; we doubt if even its most passionate defenders would seriously argue that a jury trial represents the best means that society could devise for "dispassionate and objective determination of factual issues." Far more than mere formality or the imposition of evidentiary rules is involved in a jury trial. In the fully adversary atmosphere necessarily generated by a jury trial, objectivity and dispassion are the exception, not the rule. Imposition of this atmosphere into juvenile proceedings would be, we submit, totally destructive of the beneficial aspects of the juvenile process, with no gain whatever in the reliability of the fact-finding process.

Finally, petitioners do not consider the problem of waiver which would result from the wholesale importation of criminal law procedures into the juvenile court system, particularly where the "right" in question is of highly debatable benefit or utility. The obvious problems of waiver by a juvenile have been recognized. *See, e.g., In re Gault, supra,* at 55; Comment, *The Juvenile Court Revolution in Washington,* 44 Wash. L. Rev. 421, 432-33 (1969). It has been stated that there are two issues involved: (1) What is the standard for an effective waiver; and (2) who has the authority to waive the juvenile's rights. *Ibid.*

If a juvenile court proceeding is a criminal trial, and the adult "protections" are to apply to the juvenile in full force, then he must have a jury trial as a constitutional right unless he has knowingly and intelligently waived it. *Cf., In re Gault, supra* at 42. There will obviously be some juveniles who will be incapable of waiving due to age or circumstances.

Yet, even in the sizable number of jurisdictions which provide by statute for a jury trial, the "right" is rarely exercised; most juveniles, or their parents or counsel, choose the informality, privacy, and expertise of a court proceeding. *See* Pausen, *op. cit. supra,* at 186; *Peyton v. Nord, supra,* at 726. However, if anyone but the juvenile is able to waive this right, then we are applying a different standard to juveniles, impermissible under the rationale that the differences in juvenile court proceedings do not justify deviation from the criminal law model. Thus, the unconscionable result of establishing the criminal jury trial as a constitutional right in a juvenile proceeding is to force the child incapable of waiving to participate in a jury trial which most legislatures have weighed and found wanting, and which those children capable of making an intelligent choice or their representatives nearly invariably reject.[11]

To answer that the problem does not exist because parent or counsel may waive the right is inevitably to recognize that the difference in proceedings concerning juveniles justifies different standards than those applied to adults.

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11. This should be contrasted with the situation in the adult criminal courts. "The laws of every state guarantee a right to jury trial in serious criminal cases; no state has dispensed with it; nor are there significant movements underway to do so." *Gault* at 154. "[T]he fact is that in most places more trials for serious crimes are to juries than to a court alone; a great many defendants prefer the judgment of a jury to that of a court." *Id.* at 158.

If this is so, then we fail to see why these same differences do not justify judicial deference to the legislative "waiver" made for all juveniles on the basis that their interests are not best served by a jury trial.

CONCLUSION

The problems of treating neglected, potentially delinquent and delinquent children cannot be adequately dealt with by forcing the proceedings into a criminal mold or by making the applicability of the criminal label depend on the potential disposition. Children and their parents are entitled to due process and fair proceedings whenever the state seeks to intervene in their relationship or to institutionalize the child. To recognize this, however, does not and should not compel the imposition of procedures developed to deal with the different problems of adults charged with crimes. Juvenile proceedings, when carefully developed as in California, are *sui generis* and represent considered legislative judgment as to the best way to deal in a rational and humane manner with the complex problems involved. We urge that this Court defer to the legislative judgment so that the system may evolve as necessary to deal with the problem.

Dated: September 17, 1970

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 128

IN RE BARBARA BURRUS, et al.,

Petitioners.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

REPLY BRIEF FOR PETITIONERS

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Petitioners have received the briefs of the State of North Carolina and various amici curiae and herewith file their reply.

ARGUMENT

NEITHER THE ADJUDICATIVE PHASE OF JUVENILE COURT PROCEEDINGS NOR THE CHARACTER OF STATE JUVENILE INSTITUTIONS ARE SUFFICIENTLY DISTINGUISHABLE FROM CRIMINAL PROCEEDINGS, OR INCARCERATION AS TO JUSTIFY DENIAL OF TRIAL BY JURY TO THOSE CHARGED WITH DELINQUENCY.

In essence, North Carolina, and those amici who support the State's position, argue that denying jury trials to juve-

niles on the question of whether they are delinquents by reason of violation of state criminal laws results from a proper balancing of the equities. The State and amici contend, primarily, that the purpose of the juvenile court system is rehabilitative and thus its operation is to be distinguished from criminal proceedings; that a jury trial will result in a loss of confidentiality (which will in itself impair the rehabilitative purposes of the juvenile court system); and that the availability of jury trials will result in delays in adjudication and, therefore, in the availability of rehabilitative services.

Initially, it should be observed that regardless of the quality of rehabilitative services in fact made available by the State to youth, incarceration that follows juvenile court proceedings cannot be considered exclusive of punishment of the juvenile, *In re Gault*, 387 U.S. 1, 27 (1967).[1] Whether for his own good or not, the youth is labelled a law breaker, held against his will and subject to an institutional regime 24 hours a day. Although in its brief North Carolina states that "rehabilitation is the juvenile court's polar star" the State is about as far from realizing this laudable goal in the administration of its juvenile correctional institutions as from the north star itself. Recent research undertaken in North Carolina juvenile institutions simply fails to support the notion that the State treats its children so differently from its adults as to justify denial of trial by jury to the young (even assuming some rational relationship between provision of benefits in a training school and safeguards that are to attend the adjudicative phase).

Such rehabilitative services available to juveniles are provided in the familiar institutional context employed for both young and old convicted of crime; the quality of services and facilities offered is hardly likely to result in a substan-

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[1] It would likewise be inaccurate to suppose that adult penal institutions, in North Carolina and elsewhere, do not present rehabiliative opportunities to inmates. In both adult and juvenile cases the decisions of sentencing judges and the operation of custodial institutions reflect the varied purposes of criminal sentencing.

tial benefit being conferred on the youth. This picture of juvenile detention in North Carolina emerges clearly from *A Report on the North Carolina Juvenile System: Courts, Corrections, and Aftercare*, Duke Center on Law and Poverty (hereafter Duke Report) (mimeo, 1969).[2] The study illustrates well the conclusion reached by this Court that:

> It is of no constitutional consequence—and of limited practical meaning—that the institution . . . [in which] a youth] is committed is called an Industrial School. *In re Gault*, 387 U.S. 1, 27 (1967).

The Duke Report found that detention was most plainly penal in nature at the C.A. Dillon School, which houses those "youngsters who present problems at the State's seven other training schools" (Duke Report, 182).[3] Dillon reflects the "orthodox maximum security principles of penology" (*Ibid.*). Unlike the seven other institutions, it is surrounded by a fifteen-foot cyclone fence with double barbed wire at the top:

> Every child lives in a small individual cell. He sleeps on an indestructable and immovable bed under an inaccessible light fixture that remains dimly lit throughout the night . . . He may look out the

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[2]The report was prepared by the Duke Center on Law and Poverty of Duke University School of Law under a grant from the United States Office of Economic Opportunity and it represents the codification of research and interviews as well as site visits to the state's eight training schools. An observer spent one week each at the four boys' schools (Eastern Carolina School for Boys, Stonewall Jackson Training School, Samuel Leonard Training School and Morrison Training School). One-day visits were made to the remaining institutions (C.A. Dillon School, Juvenile Evaluation Center, Dobbs Farm, and Samarcand Manor).

[3]In an article describing the study, one researcher reported that other state training schools are only quantitively different from Dillon, and more akin to "low-security prison camp[s] than they are to enlightened institutions envisioned in the General Assembly's legislation and the North Carolina Supreme Court's opinions." Hough, "*Unconstitutionality of the North Carolina Reformatories*," 14 (Duke Center on Law and Poverty; mimeo, 1970).

> window if he is tall enough, but he cannot open it without a special key. . . .
>
> Every thirty minutes throughout the night, counselors check each child through little windows in their cell doors. (*Id.* at 184, 185.)

This penal atmosphere is illustrated by the methods utilized for discipline. Although corporal punishment is forbidden, instances of it are prevalent (Duke Report at 85, 90, 114, 199). Solitary confinement is one of the "legal" forms of punishment which is practiced openly at all schools in order to discipline those who blantantly misbehave or who run away (*Id.* at 88, 113, 153, 165-167, 189, 194). Being placed in solitary confinement in the "quiet" or "meditation" room (or as it is commonly called at the schools "the jug") is not a pleasant experience:

> The jug itself consists of a small room in which a slab of rock serves as a bed. An offender must strip down to his underwear. He is permitted to read only the Bible, and he is served only two meals a day. At 5 o'clock in the evening he is given a mattress on which to sleep, at 6 o'clock the next morning the mattress is removed and the bare rock is all the boy has to rest on (*Id.* at 88; see also 133).

"This is not committment for the boy's safety or for someone else's safety. This is incarceration for punishment pure and simple." (*Id.* at 134).

At Eastern Carolina School for Boys, a visit to the "quiet room" is supposedly limited to seven consecutive days. However, the rule is circumvented by removing a boy after the seventh day only to return him immediately. Although one boy claimed to have spent twenty-one days in "the jug" a social worker explained that a week was the normal period of confinement (*Id.* at 88).

The penal atmosphere of the reformatories is reinforced by every facet of the inmates' daily routine. His mail is censored (*Id.* at 113, 153); and his daily life, regimented. At Eastern, for example, the boys march in silent single file

lines wherever they go and are required to wait at every doorway for permission to pass through (*Id.* at 48, 73-75). "March, march, march; the boys engage in marching *ad absurdium*" (*Id.* at 75). Although campuses of some of the training schools are attractive, many of the buildings are drab. Dobbs Farm was formerly a women's prison and "its buildings still reflect their penitentiary past. With the exception of one new cottage the structures are ugly, poorly lighted, badly ventilated, and anything but attractive." (*Id.* at 191). Two of the seven classrooms at Eastern are in a structure which was recently condemned as unsafe for use as a dormitory by the State Health Department (*Id.* at 45). There is neither a bathroom nor a water fountain in the building (*Id.* at 49).

The drabness and regimentation of life at the training schools is reflected in the diet and dining facilities. At Eastern, a cottage has twenty minutes to eat a meal in a dingly,colorless dining hall (*Id.* at 74). Similarly, at Dobbs Farm "the dining facilities are in abismal condition" (*Id.* at 195). To be sure the drabness of Dobbs, the formerly all black training school, is heightened in comparison to good quality food and pleasant dining hall at Samarcand Manor, which was formerly only for white girls (*Id.* at 200) and which was the only school that treated mealtime as more than another regimented period in the lives of the inmates.

The Duke Report found that the penal atmosphere of the institutions studied was reinforced by the stigma attached to children by training school personnel. As soon as he arrives at the school, a child is made to feel that he has done "something very wrong to be at the school" (*Id.* at 105). Very few people at the school talk positively about the boys. "Negativism looms over the campus and the stigma grows" (*Id.* at 106).

Although the North Carolina General Statutes proclaim that the special juvenile process is intended to "assure the protection, treatment, rehabilitation or correction which is appropriate . . ." for the youngsters (§ 7A-277) serious

attempts are not made to meet the special psychological, medical, social, and vocational needs which may differentiate a young offender from an adult (and which if filled might lead to healthy adjustment). It is with this failure in mind that one must appraise the position of the National Council of Juvenile Court Judges, that differences between adulthood and adolescence justify the denial of a jury trial to a juvenile where an adult accused of the same offense would be entitled to receive one (brief at 8, 9; see also brief of State of North Carolina at 25, 26). For example, juveniles sent to training schools are in dire need of inspiring and remedial education, but generally neither is found in North Carolina:

> Most of the young lads . . . have come from backgrounds filled with dull teaching and irrelevant curricula. They have responded with 'truancy' either in the form of skipping public school completely or by sitting restlessly and sullenly at the back of the classroom . . . Unfortunately, at the training school, they face the same academic wilderness they so desperately tried to escape (Duke Report at 50-1; see also 70, 145, 175-6).

Too many classes consist of monotone lectures read straight from the textbook by the teacher who then has students read passages out loud row after row (*Id.* at 145; see also 48, 50, 175). Such imaginative instruction as is available is overshadowed by the monotony of the teaching as a whole (*Id.* at 51-70). At Eastern, for example, the more progressive teachers are discouraged by the faculty and administration (*Id.* at 70). "From our observations . . . we realized that . . . boredom ran rampant throughout the school system" (*Id.* at 50).

Only the Juvenile Evaluation Center, Dillon, and a pilot cottage at Jackson offer group therapy (*Id.* at 188, 131). All training schools do have two or three social workers, but each is extremely overworked and carries a caseload of over 115 children (*Id.* at 93, 135-8, 171, 196). These social workers only have time to attend to those who disrupt life at the school and must ignore the quiet, although equally

troubled children, whose problems might be remedied with talk and understanding (*Id.* at 135, 196). The cottage parents (adults who supervise the living units) are untrained in counselling and most have no desire to attempt it. At Jackson, "only about four out of the forty-seven cottage parents feel the desire to listen to a boy's problem and discuss it with him in a non-defensive way." (*Id.* at 120). It should be noted that few cottage parents have more than a high school education, many are retired, and most resent their lack of prestige and low pay (*Id.* at 85-6, 120, 132).

Without proper counselling, problems stemming from the child's homelife are ignored: "neither the school nor the local court or welfare officials seriously work with the student's family while he is in training school in order to improve the environment that was responsible for his commitment" (*Id.* at 153; see also 104-5). Consequently, once a child is released he is no better equipped to deal with his family or community than he was before. Half return to the training schools (*Id.* at 154). Compare *In re Gault*, 387 U.S. 1, 21-23 (1967).

Not only do training schools ill prepare children for release by failing to deal with special social and psychological problems, but the schools also foster values which may make the child's life outside of the school more difficult (Duke Report at 73). Subservience to the authority structure of the school is paramount and exposure to the complexities of human relationships is absent. (*Id.* at 66). As a concomitant of this rigid authority structure, the schools place a premium on dependence and group-oriented behavior while discouraging initiative, creativity, and individualism (*Id.* at 66, 76, 79, 97, 99-101, 115). Except for group therapy sessions (which are provided at only three schools) there are no channels through which the children can voice displeasure, let alone alter any facet of training school life (*Id.* at 188). Proposals to establish student governments have been rejected, denying the children any training in democracy (*Id.* at 79, 100 n. 7, 115). The effect is that:

> Personal dignity and integrity are washed away in the school's efforts to control. Dependence is fostered and self-esteem remains undeveloped. Unhappiness, insecurity, anti-social behavior, and even serious crimes may result from this undeveloped personal esteem. The thwarting of independence may result in costly felonies in the future (*Id.* at 100).

Just as a child's special educational and psychological needs are ignored so are his medical needs. In fact, at Eastern, a child's financial condition may determine whether he receives dental care or undergoes an operation. One social worker explained, "if it's an emergency we worry about the money later; but if it is not, we don't proceed until we can find money. Sometimes we don't proceed." (*Id.* at 81). There are stark contrasts between the medical facilities at different schools. Dobbs Farm, the formerly all black school, has one nurse who is supposed to care for 235 girls with little money and equipment (*Id.* at 194). The formerly all white Samarcand Manor, on the other hand, has an emergency operating room and is visited by doctors and dentists (*Id.* at 200). The Duke Report concludes that "Equal treatment ought to involve paying for candy, new street clothes, and medical expenses for all the students, especially those in need. *Parens Patriae* and *In Loco Parentis* as concepts ring hollow when the responsibilities of good parents are not borne by the State in caring for its youthful wards" (*Id.* at 81). Thus North Carolina juvenile institutions present a familiar pattern: rehabilitation is a stated goal but the facilities, services, personnel and programs necessary to realize it fall far short of what is required.

Modern penological theory stresses that both young and old offender is likely to return to society and that every effort should be made to prepare him for that return and improve his capacity to adjust to the economic and social realities that he will confront. In the case of juveniles, a fair statement of the matter is that because of age it is recognized that we may be more successful in rehabilitation and thus every advantage should be given to young offenders in struc-

turing opportunities for change and improvement. Thus the juvenile court system reflects, and petitioners in no way challenge, the informality and broad discretion of judges and probation officials at juvenile court intake and at the dispositional phase. When a judge or a probation officer evaluates the dispositional alternatives available and fits them to the young offender he is exercising a discretion and an expertise in selecting and structuring such treatment.

But we fail to understand how the state's decision not to enhance the retributive aspects of incarceration when dealing with juveniles can be taken as a justification for denial of a jury trial at the adjudicative phase. Even were North Carolina, and other states, able to show that they made available a wealth of treatment options, sufficient to transform the youth into a person likely to live a healthy and adjusted life, it could still be doubted whether the state had the power to dispense with constitutionally required factfinding protections, otherwise deemed essential prior to involuntary confinement for culpable conduct. Where the state operates and maintains custodial institutions that seem to serve primarily to hold, and barely to educate or to train the young, the case for less rigorous factfinding procedures dissolves. The Court cannot simply ignore the grim reality of "rehabilitation": that the poor and the black are those usually incarcerated; that they are treated as if they have broken society's rules; and held for long periods of time—to emerge older, but basically unchanged, for the experience.

In recognition, perhaps, of both the reality of custodial incarceration in state juvenile institutions and this Court's rejection in *Gault* of the significance of a rehabilitative purpose as a justification for informality in fact-finding, North Carolina and The National Council of Juvenile Court Judges also urge that trial by jury is itself counter-rehabilitative. Thus is it said that juries will bring "the traditional delay, formality and inevitable 'clash and clamor' of adversary proceedings" (brief of National Council, 30); that the juvenile judge will now become concerned with the "technicalities of

procedure" (*Id.* at 33), that hearsay evidence will have to be excluded (*Ibid*); that the juvenile will be punished by publicity (brief of North Carolina 25); and that jury trials will delay "counselling, treatment, rehabilitation and reform of a troubled child" (brief of National Council at 32). Aspects of these contentions have been discussed in petitioners' brief and the amicus brief of the Public Defender Services for the District of Columbia and the Neighborhood Legal Service Program of Washington, D.C. Several points, however, merit a reply.

First. It should be noted (as both North Carolina (p. 28) and the National Council appear to concede (p. 35)) that no empirical evidence has been presented which corroborates, much less establishes, the premise that a jury trial impairs the health of the child or his family, or interferes with his rehabilitation. On the contrary, one may doubt that the rehabilitative prospects of a youth are fostered when court proceedings (which determine whether a state criminal law has been violated, subject the youth to lengthy incarceration and stigmatize him in the eyes of much of the community) are structured so as to deny a community judgment as to guilt solely because of age. In the instant case, for example, the black juveniles who protested what they considered blatant acts of racial discrimination against black school children are unlikely to have had their confidence and trust in society strengthened by trial before a white juvenile court judge rather than a jury representing the community as a whole—especially when the adults who demonstrated with them were entitled to trial by jury. One may suppose that it will be somewhat difficult for blacks, who have for decades sought the right to trial by a cross-section of their communities as a protection against, inter alia, case-hardened and oppressive attitudes of trial judges, cf. *State v. Holt*, 90 N.C. 749 (1884), to understand how their welfare is served by requiring them to go to trial without a jury.

Second. The notion that by granting petitions' motion for a jury trial a juvenile court is converted into a front page

circus is unreal. As in adult cases the overwhelming majority of criminal cases do not command public attention. Moreover, the newsworthiness of a case does not depend on the presence of a jury. In urban areas it is unlikely that all but the most notorious juvenile case would become a subject for newspapers, radio or television. In rural areas, the media might be concerned with the more commonplace juvenile case but it is likely that a small community would learn the nature of such occurrences and persons apprehended, whether or not reported, simply by word of mouth. So in the case at bar, despite the fact that petitioners were not entitled to a jury trial, sufficient publicity attended their adjudication as delinquents to move a national organization to issue a report describing the events involved. See *Hyde County North Carolina: School Boycott and the Roots of Conflict* (N.E.A. 1969).

We reiterate what was urged at length in petitioners' brief (pp. 21-23): there is simply no reason why a jury trial in those cases where a defendant and his counsel determine that one is in the best interests of the child must be equated with unregulated reporting. If a state believes that publicity punishes juveniles it does better exercising it powers to promote privacy and regulate disclosure rather than to deny jury trials to those juveniles who wish one. It is hardly in the interest of a youth who wishes a jury trial in order to protect himself from, for example, a case-hardened judge or one who has seen inadmissible evidence, to deny him trial by jury because he may suffer the indirect consequences of disclosure if he has a jury trial. Without a trial by jury such a youth may suffer the far more painful fate of unjustifiable incarceration, despite the existence of what a jury might find to be a reasonable doubt of guilt. *Cf. In re Winship*, 397 U.S. 358 (1970). Far more reasonable a course to protect youths from publicity is regulation of disclosure in juvenile cases, restriction of the persons who may attend court proceedings, and recognition that those juveniles who are concerned about publicity are most likely to waive their right to trial by jury. *Standards Relating to Fair Trial and Free*

Press, passim (American Bar Assoc. Project on Minimum Standards for Criminal Justice, 1966). *Cf. Patton v. United States*, 281 U.S. 276, 297 (1929).

Third. It is argued that jury trials burden the administration of justice and cause delay. Of course, jury trials may contribute to delays in court proceedings—although (1) the experience of jurisdictions that have made jury trials available, as amply documented by the only empirical evidence before the Court, submitted by the Public Defender Service for the District of Columbia and the Neighborhood Legal Service Program of Washington, D.C., strongly suggests that such burdens are not imposing, and (2) clogged court calendars are the product of a variety of factors operating on a particular court system and cannot be said to have been caused by the availability of jury trials. But, regardless of what one might say as an initial matter about the availability of trial by jury, our criminal procedure has evolved in such a manner as to make such administrative burdens clearly worth carrying when they purchase a community judgment before stigma and incarceration are imposed, *Duncan v. Louisiana*, 391 U.S. 145, 149 n. 14 (1968). The Court considered and rejected such arguments when it recently determined that the right to trial by jury was constitutionally protected for all but minor offenses despite the "administrative conveniences" that might attend judge trials, *Baldwin v. New York*, 399 U.S. 66, 73 (1970).

It is suggested, moreover, that jury trials will delay the availability to the youth of such rehabilitation as are offered by the states. This is simply contrary to fact. In North Carolina, as in most jurisdictions with which we are familiar, the juvenile authorities have ample authority to control and condition the activities of the juvenile prior to final adjudication. Section 7A-285 of the N.C. General Statutes authorizes the court "to assume immediate custody of the child," prior to hearing on the merits, and to enter such orders as are required for the child's best interests. The court may provide for physical custody of the child and is

authorized "to take the child to such place or person as is designated." Thus there is abolutely no reason why treatment of the juvenile need await final adjudication. Indeed, to so contend is merely to suggest that the state has failed in still another way to provide adequate facilities and services to young people. A state which makes available counseling and treatment to a troubled child and his family only in a facility where the child is to be separated from his home for months, if not years, of institutional living has totally failed in its obligations to young people. If this is the character of the "rehabilitative ideal," discussed by the state and the National Council, we suggest that trial by jury is more, not less, desirable. A juvenile court system which declines to assist a youth in trouble until after adjudication –and then sends him to a custodial institution–is unworthy of any special treatment under the Constitution.

Finally, petitioners submit that the premise on which the arguments of both the State and the National Council is built–that the adjudicative phase of the Juvenile Court is unique–is no longer valid. Aside from the right to jury trial at issue here–and the right to public trial–decisions of this Court, as reflected in North Carolina law, have produced a fact-finding procedure almost indistinguishable from that of a criminal case. As the American adversary system has been designed principally with the jury in view, for a number of reasons its fair administration requires maintenance of the right to jury trial. Thus it is potentially mischievous to provide for counsel, confrontation, the privilege against self-incrimination, proof beyond a reasonable doubt but not a jury trial.

This is most obvious in the case of the reasonable doubt standard which was, of course, developed and defined in the context of trial by jury. See IX Wigmore, *Evidence* § 2497 (3d Ed. 1940). Since it is plain that a state carries a far lesser burden in convincing one man rather than twelve of a defendant's guilt beyond a reasonable doubt, the constitutional standard of proof is weakened when a defendant is tried to a judge. Compare *Hibdon v. United States*, 204 F.

2d 834 (6th Cir. 1953). In addition to the sheer weight of numbers, the diversity of a jury gives substance to the reasonable doubt standard, and insures that an accused will not be convicted unless jurors of varied backgrounds and outlook concur in the judgment:

> Juries fairly chosen from different walks of life bring into the jury box a variety of different experiences, feelings, intuitions and habits. Such juries may reach completely different conclusions than would be reached by specialists in any given field. *Toth v. Quarles*, 350 U.S. 11, 17 (1955).

Moreover, a defendant is entitled to the interchange and testing of ideas before a judgment against him is rendered. *Allen v. United States*, 164 U.S. 492, 501 (1896). The verdict of a trial judge, not only represents the thinking of a single man, with all the danger of individual predispositions that this involves, it represents thinking untested by confrontation with the contrary views of others. The essential genius of the jury trial is its effect in neutralizing or diluting peculiar biases or predispositions and insuring that individual views will stand the test of confrontation and debate–that a judgment of conviction may emerge only if each juror becomes satisfied that guilt has been established beyond a reasonable doubt. Thus it is not accidental that Kalven and Ziesel have concluded:

> "If a society wishes to be serious about convicting only when the State has been put to proof beyond a reasonable doubt, it would be well advised to have jury system." (*The American Jury*, 189-90)[4]

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[4]Should juvenile judges share the views expressed in the briefs of the State of North Carolina and the National Council, as to the benign character of juvenile rehabilitation in custodial institutions, the jury applying the reasonable doubt standard is an even more essential protection. A judge who believes that adjudication of guilt is not a prelude to punishment for wrongdoing but merely a precondition to satisfying the needs of the youth is far more likely to regard rigid adherence to the reasonable doubt standard as an encumbrance to helping a youth.

In a jury case, when the defense contends that evidence that the prosecution intends to offer is inadmissible under an exclusionary rule, a hearing is held by the trial judge, out of the presence of the jury, for the purpose of determining the validity of the constitutional claim. At this hearing, of course, the substance of the evidence in question is presented to the judge. The evidence can be submitted to the jury only if the trial judge determines that it has not been secured in violation of the constitutional rights of the defendant. See *Jackson v. Denno*, 378 U.S. 368 (1964).

In *Jackson v. Denno, supra*, the Court held that this separation of functions is mandatory under the Due Process Clause of the Fourteenth Amendment, and that the task of determining the admissibility of evidence–In *Jackson,* the voluntariness of a confession–cannot be delegated to the jury. The primary basis for the decision was the Court's recognition that jurors would be unable to exclude from their consideration a truthful, but involuntary, confession. (378 U.S. at 388-89). But the dangers perceived by the Court in *Jackson v. Denno* exist whenever a single body determines both the admissibility of evidence and the guilt or innocence of the accused. It is fictitious to assume that in a close case, the judgment of the trial judge will not be influenced by a belief in guilt, derived from exposure to an inadmissible confession or constitutionally inadmissible, physical evidence.[5] *Cf. Krulewitch v. United States*, 336 U.S. 440, 453

[5]That exposure to inadmissible evidence will, in fact, influence the judgment of a judge on the ultimate issue of guilt or innocence is confirmed by Kalven & Zeisel, *The American Jury* (1966). In connection with that work, questionnaires were distributed to cooperating trial judges for the purpose of analyzing the differences in the evaluation of identical cases by a judge and jury. Trial judges indicated the result they would reach before the jury returned its verdict in 3,576 cases. The authors found that in 828 cases, the judge would have convicted the defendant of the crime charged, but the jury did not do so. (P. 110, Table 24). In thirteen percent of these cases, the judge pointed to facts that he knew but that could not be put before the jury as one explanation for the disagreement. (P. III, Table 26.)

(1949) (Mr. Justice Jackson, concurring). In the case of the young person who wishes a jury because the trial judge has seen a statement before adjudication—claimed to be inadmissible on constitutional grounds—"Absent a jury trial all questions of fact . . . are determinable by the same Judge who presides at the trial." *In re Daniel Richard D.*, 261 N.E.2d 627, 630, 27 N.Y.2d 90 (1970). Yet a major reason trial lawyers request jury trials is that the judge may have been exposed to inadmissible evidence in the course of deciding whether to admit it in evidence. *Cf. Simmons v. United States*, 390 U.S. 377, 393-94 (1968). Proper operation of constitutional exclusionary rules and other rules relating to the exclusion of evidence, requires that the determination of admissibility not be made by the body determining guilt or innocence. Trial by jury permits the separation of these functions and guarantees constitutional rights to have illegally obtained evidence and other inadmissible evidence "entirely disregarded." *Jackson v. Denno, supra*, 378 U.S. at 389.

Contagion of the trial judge by proferred evidence which he hears in ruling on its "admissibility" is only one prejudicial incident of non-jury trials. It is no exaggeration to say that bench trials deny the defendant the benefit of most evidentiary rules. This is so for several reasons. "[I]t is virtually impossible to convince an appellate court that the receipt of inadmissible evidence in a bench trial was prejudicial. Although trial judges are given great credit by appellate judges for having reasoning powers that allow them to compartmentalize their minds and segregate admissible from inadmissible evidence in arriving at a verdict, as a practical matter trial judges are no less human than jurors." II Amsterdam, Segal & Miller, *Trial Manual for the Defense of Criminal Cases*, Section 317, at p. 2-247 (1967). Furthermore, the confusion of roles of the trial judge who also tries

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Certainly, there are cases in addition to this number in which such information has some conscious or subconscious influence on the trial judge but which would not be reported in this candid fashion.

the facts tends to promote avoidance of clear cut rulings on evidentiary issues. "[I]n a bench case, some judges make it a practice to take defense objections to the admissibility of evidence under advisement, and then when it is clear that the prosecution has a sufficient case apart from the contested evidence, they will insulate themselves from reversal by announcing that they are not going to consider the evidence, but find the defendant guilty without it. This sort of evasion of tricky evidentiary issues cannot be worked in a jury trial." *Id.* at p. 2-248.

In addition, the judge frequently comes to the determination of the guilt question against a background that makes impartial appraisal of the admissible evidence impossible. Informed by prior contacts with the case or with the defendant that he is unable to avoid, the judge who sits on the guilt issue almost invariably knows of a prior record and and other unfavorable personal facts. Moreover, he approaches determinations of credibility with attitudes hardened by observation of prior trials to which the defendant was not a party; and it is no accident, in particular, that he tends to believe police witnesses, since the judge has probably heard the same officer testify against a dozen, or a hundred, guilty defendants. The impact of these factors varies from case to case, but it is not unusual for one or all of them to preclude a bench-tried defendant from having his guilt or innocence fairly heard on the admitted and admissible evidence and nothing else. It is of the very nature of the jury to bring a healthy skepticism to appraisal of the credibility of witnesses whose veracity a judge may not test simply because he has relied on the witness in the past. This function of the jury is especially significant in juvenile courts where the officers are likely to be closely related in their work to the juvenile court judge.

The judge's dual role in a non-jury trial also obscures, by commingling, the questions of law and fact which it is the defendant's right to have fairly determined and fairly reviewed. *In re Gault*, 387 U.S. 1 (1967). In a jury trial,

the principles of law applied are clearly articulated, since the judge must charge them to the jury. Limited but meaningful review is available of the jury's factual determination under the legal principles charged by the court. By contrast, where a judge is the trier of fact, no clear cut articulation or decision of either legal or factual questions is ordinarily made, and appellate review is severely hamstrung. Bench trials thus may not merely allow, but rather tend to promote arbitrariness; and, at best, they deprive the defendant of the essential conditions for a clear, visible and regular decision of the separate legal and factual questions upon which his conviction depends.

Thus, regardless of the preference one may have for or against the jury in the abstract it is obvious that a jury compliments the "structure and style of the criminal process–the supporting framework and the subsidiary procedures–" *Duncan v. Louisiana*, 391 U.S. 143, 149, n. 14 (1918). This is what we understand Mr. Justice White to have meant in *Duncan* when he wrote that a jury trial "is fundamental in the context of the criminal processes maintained by the American states." (*Ibid.*) The decisions in *Gault* and *In re Winship*, 397 U.S. 358 (1970) have constitutionally mandated an adjudicative phase of juvenile court proceedings so similar to that which is found in criminal proceedings that a right to jury trial is required in juvenile court for the same reasons that it is required in adult proceedings. *Duncan, supra*, 391 U.S. at 148, 149, 155-158.

CONCLUSION

WHEREFORE, petitioners pray that the judgment below be reversed.

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NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

McKEIVER ET AL. *v.* PENNSYLVANIA

APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

No. 322. Argued December 10, 1970—Decided June 21, 1971*

The requests of appellants in No. 322 for a jury trial were denied, and they were adjudged juvenile delinquents under Pennsylvania law. The State Supreme Court, while recognizing the applicability to juveniles of certain due process procedural safeguards, held that there is no constitutional right to a jury trial in juvenile court. Appellants argue for a right to a jury trial because they were tried in proceedings "substantially similar to a criminal trial," and note that the press is generally present at the trial and that members of the public also enter the courtroom. Petitioners in No. 128 were adjudged juvenile delinquents in North Carolina, where their jury trial requests were denied and in proceedings where the general public was excluded. *Held:* A trial by jury is not constitutionally required in the adjudicative phase of a state juvenile court delinquency proceeding. Pp. 11——.

438 Pa. 339, 265 A. 2d 350 and 275 N. C. 517, 169 S. E. 2d 879, affirmed.

MR. JUSTICE BLACKMUN, joined by THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE, concluded that:

1. The applicable due process standard in juvenile proceedings is fundamental fairness, as developed by *In re Gault*, 387 U. S. 1, and *In re Winship*, 397 U. S. 358, which emphasized factfinding procedures, but in our legal system the jury is not a necessary component of accurate factfinding. Pp. 13–14.

2. Despite disappointments, failures, and shortcomings in the juvenile court procedure, a jury trial is not constitutionally required in a juvenile court's adjudicative stage. Pp. 15–20.

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*Together with No. 128, *In re Burrus et al.*, on certiorari to the Supreme Court of North Carolina.

Syllabus

(a) The Court has not heretofore ruled that all rights constitutionally assured to an adult accused are to be imposed in a juvenile proceeding. Pp. 15–16.

(b) Compelling a jury trial might remake the proceeding into a fully adversary process and effectively end the idealistic prospect of an intimate, informal protective proceeding. P. 16.

(c) Imposing a jury trial on the juvenile court system would not remedy the system's defects and would not greatly strengthen the factfinding function. P. 17.

(d) The States should be free to experiment to achieve the high promise of the juvenile court concept, and they may install a jury system; or a juvenile court judge may use an advisory jury in a particular case. P. 18.

(e) Many States by statute or judicial decision deny a juvenile a right to jury trial, and the great majority that have faced that issue since *Gault, supra*, and *Duncan* v. *Louisiana*, 391 U. S. 145, have concluded that the considerations involved in those cases do not compel trial by jury in juvenile court. Pp. 18–20.

(f) Jury trial would entail delay, formality and clamor of the adversary system, and possibly a public trial. P. 20.

(g) Equating the adjudicative phase of the juvenile proceeding with a criminal trial ignores the aspects of fairness, concern, sympathy, and paternal attention inherent in the juvenile court system. P. 21.

MR. JUSTICE BRENNAN concluded that:

Due process in juvenile delinquency proceedings, which are not "criminal prosecutions," does not require the States to provide jury trials on demand so long as some other aspect of the process adequately protects the interests that Sixth Amendment jury trials are intended to serve. In the juvenile context, those interests may be adequately protected by allowing accused individuals to bring the community's attention to bear upon their trials. Since Pennsylvania has no statutory bar to public juvenile trials, and since no claim is made that members of the public were excluded over appellants' objections, the judgment in No. 322 should be affirmed. Pp. 1–3.

MR. JUSTICE HARLAN concurred in the judgments in these cases on the ground that criminal jury trials are not constitutionally required of the States, either by the Sixth Amendment or by due process. P. 2.

Syllabus

BLACKMUN, J., announced the Court's judgments and delivered an opinion in which BURGER, C. J., and STEWART and WHITE, JJ., joined. WHITE, J., filed a concurring opinion. BRENNAN, J., filed an opinion concurring in No. 322 and dissenting in No. 128. HARLAN, J., filed an opinion concurring in the judgments. DOUGLAS, J., filed a dissenting opinion, in which BLACK and MARSHALL, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 322 AND 128.—OCTOBER TERM, 1970

Joseph McKeiver and Edward Terry, Appellants, v. State of Pennsylvania.	On Appeal From the Supreme Court of Pennsylvania, Eastern District.
322	
In re Barbara Burrus et al., Petitioners.	On Writ of Certiorari to the Supreme Court of North Carolina.
128	

[June 21, 1971]

MR. JUSTICE BLACKMUN announced the judgment of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE join.

These cases present the narrow but precise issue whether the Due Process Clause of the Fourteenth Amendment assures the right to trial by jury in the adjudicative phase of a state juvenile court delinquency proceeding.

I

The issue arises understandably, for the Court in a series of cases already has emphasized due process factors protective of the juvenile:

1. *Haley* v. *Ohio*, 332 U. S. 596 (1948), concerned the admissibility of a confession taken from a 15-year-old boy on trial for first-degree murder. It was held that, upon the facts there developed, the Due Process Clause barred the use of the confession. MR. JUSTICE DOUGLAS, in an opinion in which three other Justices joined, said, "Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law." 332 U. S., at 601.

2. *Gallegos* v. *Colorado*, 370 U. S. 49 (1962), where a 14-year-old was on trial, is to the same effect.

3. *Kent* v. *United States*, 383 U. S. 541 (1966), concerned a 16-year-old charged with housebreaking, robbery, and rape in the District of Columbia. The issue was the propriety of the juvenile court's waiver of jurisdiction "after full investigation," as permitted by the applicable statute. It was emphasized that the latitude the court possessed within which to determine whether it should retain or waive jurisdiction "assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement of a 'full investigation.'" 383 U. S., at 553.

4. *In re Gault*, 387 U. S. 1 (1967), concerned a 15-year-old, already on probation, committed in Arizona as a delinquent after being apprehended upon a complaint of lewd remarks by telephone. Mr. Justice Fortas, in writing for the Court, reviewed the cases just cited and observed,

> "Accordingly, while these cases relate only to restricted aspects of the subject, they unmistakably indicate that, whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." 387 U. S., at 13.

The Court focused on " the proceedings by which a determination is made as to whether a juvenile is a 'delinquent' as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution" and, as to this, said that "there appears to be little current dissent from the proposition that the Due Process Clause has a role to play." P. 13. *Kent* was adhered to: "We reiterate this view, here in connection with the juvenile court adjudication of 'delinquency,' as a requirement which is part of the Due Process Clause

of the Fourteenth Amendment of our Constitution." Pp. 30–31. Due process, in that proceeding, was held to embrace adequate written notice; advice as to the right to counsel, retained or appointed; confrontation; and cross-examination. The privilege against self-incrimination was also held available to the juvenile. The Court refrained from deciding whether a State must provide appellate review in juvenile cases or a transcript or recording of the hearings.

5. *DeBacker* v. *Brainard*, 396 U. S. 28 (1969), presented, by state habeas corpus, a challenge to a Nebraska statute providing that juvenile court hearings "shall be conducted by the judge without a jury in an informal manner." However, because that appellant's hearing had antedated the decisions in *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), and *Bloom* v. *Illinois*, 391 U. S. 194 (1968), and because *Duncan* and *Bloom* had been given only prospective application by *DeStefano* v. *Woods*, 392 U. S. 631 (1968), DeBacker's case was deemed an inappropriate one for resolution of the jury trial issue. His appeal was therefore dismissed. MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, in separate dissents, took the position that a juvenile is entitled to a jury trial at the adjudicative stage. MR. JUSTICE BLACK described this as "a right which is surely one of the fundamental aspects of criminal justice in the English-speaking world," 396 U. S., at 34, and MR. JUSTICE DOUGLAS described it as a right required by the Sixth and Fourteenth Amendments "where the delinquency charged is an offense that, if the person charged were an adult, would be a crime triable by jury." 396 U. S., at 35.

6. *In re Winship*, 397 U. S. 358 (1970), concerned a 12-year-old charged with delinquency for having taken money from a woman's purse. The Court held that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt

of every fact necessary to constitute the crime with which he is charged," 397 U. S., at 364, and then went on to hold, p. 368, that this standard was applicable, too, "during the adjudicatory stage of a delinquency proceeding."

From these six cases—*Haley*, *Gallegos*, *Kent*, *Gault*, *DeBacker* and *Winship*—it is apparent that:

1. Some of the constitutional requirements attendant upon the state criminal trial have equal application to that part of the state juvenile proceeding that is adjudicative in nature. Among these are the rights to appropriate notice, to counsel, to confrontation and to cross-examination, and the privilege against self-incrimination. Included, also, is the standard of proof beyond a reasonable doubt.

2. The Court, however, has not yet said that *all* rights constitutionally assured to an adult accused of crime also are to be enforced or made available to the juvenile in his delinquency proceeding. Indeed, the Court specifically has refrained from going that far:

> "We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." *Kent*, 383 U. S., at 562; *Gault*, 387 U. S., at 30.

3. The Court, although recognizing the high hopes and aspirations of Judge Julian Mack, the leaders of the Jane Addams School [1] and the other supporters of the juvenile court concept, has also noted the disappointments of the system's performance and experience and the resulting widespread disaffection. *Kent*, 383 U. S.,

[1] See Mr. Justice Fortas' article, Equal Rights—For Whom?, 42 N. Y. U. L. Rev. 401, 406 (1967).

at 555–556; *Gault*, 387 U. S., at 17–19. There have been, at one and the same time, both an appreciation for the juvenile court judge who is devoted, sympathetic, and conscientious, and a disturbed concern about the judge who is untrained and less than fully imbued with an understanding approach to the complex problems of childhood and adolescence. There has been praise for the system and its purposes, and there has been alarm over its defects.

4. The Court has insisted that these successive decisions do not spell the doom of the juvenile court system or even deprive it of its "informality, flexibility or speed." *Winship*, 397 U. S., at 366–367. On the other hand, a concern precisely to the opposite effect was expressed by two dissenters in *Winship*. 397 U. S., at 375–376.

II

With this substantial background already developed, we turn to the facts of the present cases:

No. 322. Joseph McKeiver, then age 16, in May 1968 was charged with robbery, larceny, and receiving stolen goods (felonies under Pennsylvania law, 18 P. S. §§ 4704, 4807, and 4817) as acts of juvenile delinquency. At the time of the adjudication hearing he was represented by counsel.[2] His request for a jury trial was denied and his case was heard by Judge Theodore S. Gutowicz of the Court of Common Pleas, Family Division, Juvenile Branch, of Philadelphia County, Pennsylvania. McKeiver was adjudged a delinquent upon findings that he had violated a law of the Commonwealth. 11 P. S.

[2] At McKeiver's hearing his counsel advised the court that he had never seen McKeiver before and "was just in the middle of interviewing him." The court allowed him five minutes for the interview. Counsel's office, Community Legal Services, however, had been appointed to represent McKeiver five months earlier. Appendix 2.

§ 243 (4)(a). He was placed on probation. On appeal, the Superior Court affirmed without opinion. *In re McKeiver*, 215 Pa. Super. 760, 255 A. 2d 921 (1969).

Edward Terry, then age 15, in January 1969 was charged with assault and battery on a police officer and conspiracy (misdemeanors under Pennsylvania law, 18 P. S. §§ 4708 and 4302) as acts of juvenile delinquency. His counsel's request for a jury trial was denied and his case was heard by Judge Joseph C. Bruno of the same Juvenile Branch of the Court of Common Pleas of Philadelphia County. Terry was adjudged a delinquent on the charges. This followed an adjudication and commitment in the preceding week for an assault on a teacher. He was committed, as he had been on the earlier charge, to the Youth Development Center at Cornwalls Heights. On appeal, the Superior Court affirmed without opinion. *In re Terry*, 215 Pa. Super. 762, 255 A. 2d 922 (1969).

The Supreme Court of Pennsylvania granted leave to appeal in both cases and consolidated them. The single question considered, as phrased by the court, was "whether there is a constitutional right to a jury trial in juvenile court." The answer, one justice dissenting, was in the negative. *In re Terry*, 438 Pa. 339, 265 A. 2d 350 (1970). We noted probable jurisdiction. 399 U. S. 925 (1970).

The details of the McKeiver and Terry offenses are set forth in Justice Roberts' opinion for the Pennsylvania court, 438 Pa., at 341–342 nn. 1 and 2, 265 A. 2d, at 351 nn. 1 and 2, and need not be repeated at any length here. It suffices to say that McKeiver's offense was his participating with 20 or 30 youths who pursued three young teenagers and took 25 cents from them; that McKeiver never before had been arrested and had a record of gainful employment; that the testimony of two of the victims was described by the court as somewhat inconsistent and as "weak"; and that Terry's offense

consisted of hitting a police officer with his fists and with a stick when the officer broke up a boys' fight Terry and others were watching.

No. 128. Barbara Burrus and approximately 45 other black children, ranging in age from 11 to 15 years,[3] were the subjects of juvenile court summonses issued in Hyde County, North Carolina, in January 1969.

The charges arose out of a series of demonstrations in the county in late 1968 by black adults and children protesting school assignments and a school consolidation plan. Petitions were filed by North Carolina state highway patrolmen. Except for one relating to James Lambert Howard, the petitions charged the respective juveniles with wilfully impeding traffic. The charge against Howard was that he wilfully made riotous noise and was disorderly in the O. A. Peay School in Swan Quarter; interrupted and disturbed the school during its regular sessions; and defaced school furniture. The acts so charged are misdemeanors under North Carolina law. N. C. Gen. Stats. §§ 20.174.1, 14–132 (a), 14–273.

The several cases were consolidated into groups for hearing before District Judge Hallett S. Ward, sitting as a juvenile court. The same lawyer appeared for all the juveniles. Over counsel's objection, made in all except two of the cases, the general public was excluded. A request for a jury trial in each case was denied.

The evidence as to the juveniles other than Howard consisted solely of testimony of highway patrolmen. No juvenile took the stand or offered any witness. The testimony was to the effect that on various occasions the juveniles and adults were observed walking along Highway 64 singing, shouting, clapping, and playing basketball. As a result, there was interference with traffic.

[3] In North Carolina juvenile court procedures are provided only for persons under the age of 16. N. C. Gen. Stat. §§ 7A–277 and 7A–278 (1) (1969).

The marchers were asked to leave the paved portion of the highway and they were warned that they were committing a statutory offense. They either refused or left the roadway and immediately returned. The juveniles and participating adults were taken into custody. Juvenile petitions were then filed with respect to those under the age of 16.

The evidence as to Howard was that on the morning of December 5, he was in the office of the principal of the O. A. Peay School with 15 other persons while school was in session and was moving furniture around; that the office was in disarray; that as a result the school closed before noon; and that neither he nor any of the others was a student at the school or authorized to enter the principal's office.

In each case the court found that the juvenile had committed "an act for which an adult may be punished by law." A custody order was entered declaring the juvenile a delinquent "in need of more suitable guardianship" and committing him to the custody of the County Department of Public Welfare for placement in a suitable institution "until such time as the Board of Juvenile Correction or the Superintendent of said institution may determine, not inconsistent with the laws of this State." The court, however, suspended these commitments and placed each juvenile on probation for either one or two years conditioned upon his violating none of the State's laws, upon his reporting monthly to the County Department of Welfare, upon his being home by 11 p. m. each evening, and upon his attending a school approved by the Welfare Director. None of the juveniles has been confined on these charges.

On appeal, the cases were consolidated into two groups. The North Carolina Court of Appeals affirmed. *In re Burrus*, 4 N. C. App. 523, 167 S. E. 2d 454 (1969); *In re Shelton*, 5 N. C. App. 487, 168 S. E. 2d 695 (1969).

In its turn the Supreme Court of North Carolina deleted that portion of the order in each case relating to commitment, but otherwise affirmed. *In re Burrus*, 275 N. C. 517, 169 S. E. 2d 879 (1969). Two justices dissented without opinion. We granted certiorari. 397 U. S. 1036 (1970).

III

It is instructive to review, as an illustration, the substance of Justice Roberts' opinion for the Pennsylvania court. He observes, 265 A. 2d, at 352, that "For over sixty-five years the Supreme Court gave no consideration at all to the constitutional problems involved in the juvenile court area"; that *Gault* "is somewhat of a paradox, being both broad and narrow at the same time"; that it "is broad in that it evidences a fundamental and far-reaching disillusionment with the anticipated benefits of the juvenile court system"; that it is narrow because the court enumerated four due process rights which it held applicable in juvenile proceedings, but declined to rule on two other claimed rights, p. 353; that as a consequence the Pennsylvania court was "confronted with a sweeping rationale and a carefully tailored holding"; that the procedural safeguards "*Gault* specifically made applicable to juvenile courts have already caused a significant 'constitutional domestication' of juvenile court proceedings," p. 354; that those safeguards and other rights, including the reasonable doubt standard established by *Winship*, "insure that the juvenile court will operate in an atmosphere which is orderly enough to impress the juvenile with the gravity of the situation and the impartiality of the tribunal and at the same time informal enough to permit the benefits of the juvenile system to operate" (footnote omitted); that the "proper inquiry, then, is whether the right to a trial by jury is 'fundamental' within the meaning of *Duncan* in the context of a juvenile court which operates with *all* of the

above constitutional safeguards"; and that his court's inquiry turned "upon whether there are elements in the juvenile process which render the right to a trial by jury less essential to the protection of an accused's rights in the juvenile system than in the normal criminal process."

Justice Roberts then concluded that such factors do inhere in the Pennsylvania juvenile system: (1) Although realizing that "faith in the quality of the juvenile bench is not an entirely satisfactory substitute for due process," p. 355, the judges in the juvenile courts "do take a different view of their role than that taken by their counterparts in the criminal courts." (2) While one regrets its inadequacies, p. 355, "the juvenile system has available and utilizes much more fully various diagnostic and rehabilitative services" that are "far superior to those available in the regular criminal process." (3) Although conceding that the post-adjudication process "has in many respects fallen far short of its goals, and its reality is far harsher than its theory," the end result of a declaration of delinquency "*is* significantly different from and less onerous than a finding of criminal guilt" and "we are not yet convinced that the current practices do not contain the seeds from which a truly appropriate system can be brought forth." (4) Finally, "of all the possible due process rights which could be applied in the juvenile courts, the right to trial by jury is the one which would most likely be disruptive of the unique character of the juvenile process." It is the jury trial that "would probably require substantial alteration of the traditional practices." The other procedural rights held applicable to the juvenile process "will give the juvenile sufficient protection" and the addition of the trial by jury "might well destroy the traditional character of juvenile proceedings."

The court concluded, p. 356, that it was confident "that a properly structured and fairly administered juvenile

court system can save our present societal needs without infringing on individual freedoms."

IV

The right to an impartial jury "[i]n all criminal prosecutions" under federal law is guaranteed by the Sixth Amendment. Through the Fourteenth Amendment that requirement has now been imposed upon the States "in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee." This is because the Court has said it believes "that trial by jury in criminal cases is fundamental to the American scheme of justice." *Duncan* v. *Louisiana*, 391 U. S. 145, 149 (1968); *Bloom* v. *Illinois*, 391 U. S. 194, 210–211 (1968).

This, of course, does not automatically provide the answer to the present jury trial issue, if for no other reason than that the juvenile court proceeding has not yet been held to be a "criminal prosecution," within the meaning and reach of the Sixth Amendment, and also has not yet been regarded as devoid of criminal aspects merely because it usually has been given the civil label. *Kent*, 383 U. S., at 554; *Gault*, 387 U. S., at 17, 49–50; *Winship*, 397 U. S., at 365–366.

Little, indeed, is to be gained by any attempt simplistically to call the juvenile court proceeding either "civil" or "criminal." The Court carefully has avoided this wooden approach. Before *Gault* was decided in 1967, the Fifth Amendment's guarantee against self-incrimination had been imposed upon the state criminal trial. *Malloy* v. *Hogan*, 378 U. S. 1 (1964). So, too, had the Sixth Amendment's rights of confrontation and cross-examination. *Pointer* v. *Texas*, 380 U. S. 400 (1965), and *Douglas* v. *Alabama*, 380 U. S. 415 (1965). Yet the Court did not automatically and peremptorily apply those rights to the juvenile proceeding. A reading

of *Gault* reveals the opposite. And the same separate approach to the standard of proof issue is evident from the carefully separated application of the standard, first to the criminal trial, and then to the juvenile proceeding, displayed in *Winship*. 397 U. S., at 361 and 365.

Thus, accepting "the proposition that the Due Process Clause has a role to play," *Gault*, 387 U. S., at 13, our task here with respect to trial by jury, as it was in *Gault* with respect to other claimed rights, "is to ascertain the precise impact of the due process requirement."

V

The Pennsylvania juveniles' basic argument is that they were tried in proceedings "substantially similar to a criminal trial." They say that a delinquency proceeding in their State is initiated by a petition charging a penal code violation in the conclusory language of an indictment; that a juvenile detained prior to trial is held in a building substantially similar to an adult prison; that in Philadelphia juveniles over 16 are, in fact, held in the cells of a prison; that counsel and the prosecution engage in plea bargaining; that motions to suppress are routinely heard and decided; that the usual rules of evidence are applied; that the customary common law defenses are available; that the press is generally admitted in the Philadelphia juvenile courtrooms; that members of the public enter the room; that arrest and prior record may be reported by the press (from police sources, however, rather than from the juvenile court records); that, once adjudged delinquent, a juvenile may be confined until his majority in what amounts to a prison (see *In re Bethea*, 215 Pa. Super. 75, 76, 257 A. 2d 368, 369 (1969), describing the state correctional institution at Camp Hill as a "maximum security prison for adjudged delinquents and youthful criminal offenders");

and that the stigma attached upon delinquency adjudication approximates that resulting from conviction in an adult criminal proceeding.

The North Carolina juveniles particularly urge that the requirement of a jury trial would not operate to deny the supposed benefits of the juvenile court system; that the system's primary benefits are its discretionary intake procedure permitting disposition short of adjudication, and its flexible sentencing permitting emphasis on rehabilitation; that realization of these benefits does not depend upon dispensing with the jury; that adjudication of factual issues on the one hand and disposition of the case on the other are very different matters with very different purposes; that the purpose of the former is indistinguishable from that of the criminal trial; that the jury trial provides an independent protective factor; that experience has shown that jury trials in juvenile courts are manageable; that no reason exists why protection traditionally accorded in criminal proceedings should be denied young people subject to involuntary incarceration for lengthy periods; and that the juvenile courts deserve healthy public scrutiny.

VI

All the litigants here agree that the applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness. As that standard was applied in those two cases, we have an emphasis on factfinding procedures. The requirements of notice, counsel, confrontation, cross-examination, and standard of proof naturally flowed from this emphasis. But one cannot say that in our legal system the jury is a necessary component of accurate factfinding. There is much to be said for it, to be sure, but we have been content to pursue other ways for determining facts. Juries are not required, and have not been, for example, in

equity cases, in workmen's compensation, in probate, or in deportation cases. Neither have they been generally used in military trials. In *Duncan* the Court stated, "We would not assert, however, that every criminal trial—or any particular trial—held before a judge alone is unfair or that a defendant may never be as fairly treated by a judge as he would be by a jury." 391 U. S., at 158. In *DeStefano*, for this reason and others, the Court refrained from retrospective application of *Duncan*, an action it surely would have not taken had it felt that the integrity of the result was seriously at issue. And in *Williams* v. *Florida*, 399 U. S. 78 (1970), the Court saw no particular magic in a 12-man jury for a criminal case, thus revealing that even jury concepts themselves are not inflexible.

We must recognize, as the Court has recognized before, that the fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized. The devastating commentary upon the system's failures as a whole, contained in the Task Force Report: Juvenile Delinquency and Youth Crime (President's Commission on Law Enforcement and the Administration of Justice (1967)), pp. 7–9, reveals the depth of disappointment in what has been accomplished. Too often the juvenile court judge falls far short of that stalwart, protective and communicating figure the system envisaged.[4] The community's unwillingness to provide people and facilities and to be concerned, the insufficiency of time devoted, the scarcity of professional help, the inadequacy of dispositional alter-

[4] "A recent study of juvenile court judges . . . revealed that half had not received undergraduate degrees; a fifth had received no college education at all; a fifth were not members of the bar." Task Force Report, p. 7.

natives, and our general lack of knowledge all contribute to dissatisfaction with the experiment.[5]

The Task Force Report, however, also said, page 7, "To say that juvenile courts have failed to achieve their goals is to say no more than what is true of criminal courts in the United States. But failure is most striking when hopes are highest."

Despite all these disappointments, all these failures, and all these shortcomings, we conclude that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement. We so conclude for a number of reasons:

1. The Court has refrained, in the cases heretofore decided, from taking the easy way with a flat holding that

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[5] "What emerges, then, is this: In theory the juvenile court was to be helpful and rehabilitative rather than punitive. In fact the distinction often disappears, not only because of the absence of facilities and personnel but also because of the limits of knowledge and technique. In theory the court's action was to affix no stigmatizing label. In fact a delinquent is generally viewed by employers, schools, the armed services—by society generally—as a criminal. In theory the court was to treat children guilty of criminal acts in noncriminal ways. In fact it labels truants and runaways as junior criminals.

"In theory the court's operations could justifiably be informal, its findings and decisions made without observing ordinary procedural safeguards, because it would act only in the best interest of the child. In fact it frequently does nothing more nor less than deprive a child of liberty without due process of law—knowing not what else to do and needing, whether admittedly or not, to act in the community's interest even more imperatively than the child's. In theory it was to exercise its protective powers to bring an errant child back into the fold. In fact there is increasing reason to believe that its intervention reinforces the juvenile's unlawful impulses. In theory it was to concentrate on each case the best of current social science learning. In fact it has often become a vested interest in its turn, loathe to cooperate with innovative programs or avail itself of forward-looking methods." Task Force Report, p. 9.

all rights constitutionally assured for the adult accused are to be imposed upon the state juvenile proceeding. What was done in *Gault* and in *Winship* is aptly described in *Commonwealth* v. *Johnson*, 211 Pa. Super. 62, 74, 234 A. 2d 9, 15 (1967):

> "It is clear to us that the Supreme Court has properly attempted to strike a judicious balance by injecting procedural orderliness into the juvenile court system. It is seeking to reverse the trend [pointed out in *Kent*, 383 U.S., at 556] whereby 'the child receives the worst of both worlds . . . .'"

2. There is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.

3. The Task Force Report, although concededly pre-*Gault*, is notable for its not making any recommendation that the jury trial be imposed upon the juvenile court system. This is so despite its vivid description of the system's deficiencies and disappointments. Had the Commission deemed this vital to the integrity of the juvenile process, or to the handling of juveniles, surely a recommendation or suggestion to this effect would have appeared. The intimations, instead, are quite the other way. Task Force Report, 38. Further, it expressly recommends against abandonment of the system and against the return of the juvenile to the criminal courts.[6]

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[6] "Nevertheless, study of the juvenile courts does not necessarily lead to the conclusion that the time has come to jettison the experiment and remand the disposition of children charged with crime to the criminal courts of the country. As trying as are the problems of the juvenile courts, the problems of the criminal courts, particu-

4. The Court specifically has recognized by dictum that a jury is not a necessary part even of every criminal process that is fair and equitable. *Duncan* v. *Louisiana*, 391 U. S., at 149–150 n. 14, and, at 158.

5. The imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the factfinding function, and would, contrarily, provide an attrition of the juvenile court's assumed ability to function in a unique manner. It would not remedy the defects of the system. Meager as has been the hoped-for advance in the juvenile field, the alternative would be regressive, would lose what has been gained, and would tend once again to place the juvenile squarely in the routine of the criminal process.

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larly those of the lower courts, which would fall heir to much of the juvenile court jurisdiction, are even graver; and the ideal of separate treatment of children is still worth pursuing. What is required is rather a revised philosophy of the juvenile court based on the recognition that in the past our reach exceeded our grasp. The spirit that animated the juvenile court movement was fed in part by a humanitarian compassion for offenders who were children. That willingness to understand and treat people who threaten public safety and security should be nurtured, not turned aside as hopeless sentimentality, both because it is civilized and because social protection itself demands constant search for alternatives to the crude and limited expedient of condemnation and punishment. But neither should it be allowed to outrun reality. The juvenile court is a court of law, charged like other agencies of criminal justice with protecting the community against threatening conduct. Rehabilitating offenders through individualized handling is one way of providing protection, and appropriately the primary way in dealing with children. But the guiding consideration for a court of law that deals with threatening conduct is nonetheless protection of the community. The juvenile court, like other courts, is therefore obliged to employ all the means at hand, not excluding incapacitation, for achieving that protection. What should distinguish the juvenile from the criminal courts is greater emphasis on rehabilitation, not exclusive preoccupation with it." Task Force Report, p. 9.

6. The juvenile concept held high promise. We are reluctant to say that, despite disappointments of grave dimensions, it still does not hold promise, and we are particularly reluctant to say, as do the Pennsylvania petitioners here, that the system cannot accomplish its rehabilitative goals. So much depends on the availability of resources, on the interest and commitment of the public, on willingness to learn, and on understanding as to cause and effect and cure. In this field, as in so many others, one perhaps learns best by doing. We are reluctant to disallow the States further to experiment and to seek in new and different ways the elusive answers to the problems of the young, and we feel that we would be impeding that experimentation by imposing the jury trial. The States, indeed, must go forward. If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is the State's privilege and not its obligation.

7. Of course there have been abuses. The Task Force Report has noted them. We refrain from saying at this point that those abuses are of constitutional dimension. They relate to the lack of resources and of dedication rather than to inherent unfairness.

8. There is, of course, nothing to prevent a juvenile court judge, in a particular case where he feels the need, or when the need is demonstrated, from using an advisory jury.

9. "The fact that a practice is followed by a large number of states is not conclusive in a decision as to whether that practice accords with due process, but it is plainly worth considering in determining whether the practice 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' *Snyder* v. *Massachusetts*, 291 U. S.

97, 105 (1934)." *Leland* v. *Oregon*, 343 U. S. 790, 798 (1952). It therefore is of more than passing interest that at least 29 States and the District of Columbia by statute deny the juvenile a right to a jury trial in cases such as these.[7] The same result is achieved in other States by judicial decision.[8] In 10 States statutes provide for a jury trial under certain circumstances.[9]

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[7] Ala. Code Tit. 13, § 369 (1958); Alaska Stat. § 47.10.070 (1970 Supp.); Ariz. Rev. Stat. Ann. § 8–229 (1956); Ark. Stat. Ann. § 45–206 (1964 Repl.); Del. Code Ann. Tit. 10, § 1175 (1968 Supp.); Fla. Stat. Ann. § 39.09 (2) (1961); Ga. Code Ann. § 24–2420 (1970 Supp.); Hawaii Rev. Stat. § 571–41 (1968); Idaho Code § 16–1813 (1969 Supp.); Ind. Stat. Ann. § 9–3215 (1957 Supp.); Iowa Code Ann. § 232.27 (1969); Ky. Rev. Stat. § 208.060 (1962); La. Rev. Stat. § 13:1579 (1968); Minn. Stat. Ann. § 260.155 sub. 1. (1971); Miss. Code Ann. § 7185–08 (1942); Vernon's Ann. Mo. Stat. § 211.171 (6) (1962) (equity practice controls); Neb. Rev. Stat. § 43–206.03 (2) (1968 Reissue); Nev. Rev. Stat. § 62.190 (3) (1963); N. J. Stat. Ann. 2A:4–35 (1952); McKinney's Consol. Laws N. Y., Family Court Act §§ 164 and 165 and Civ. Prac. Law and Rules § 4101; N. C. Gen. Stats. § 7A–285 (1969); N. D. Cent. Code § 27–16–18 (1960); Page's Ohio Rev. Code Ann. § 2151.35 (1968); Ore. Rev. Stat. § 419.498 (1) (1968); Purdon's Pa. Stat. Ann., Tit. 11, § 247 (1965); Code of Laws S. C. § 15.1095.19 (1970 Supp.); Utah Code Ann. § 55–10–94 (1969 Supp.); Vt. Stat. Ann., Tit. 33, § 651 (a) (1970 Supp.); Rev. Code Wash. Ann. § 13.04.030; D. C. Code § 16–2316 (a) (Supp. 1971).

[8] *In re Daedler*, 194 Cal. 320, 228 P. 467 (1924); *Cinque* v. *Boyd*, 99 Conn. 70, 121 A. 678 (1923); *In re Fletcher*, 251 Md. 520, 248 A. 2d 364 (1968); *Commonwealth* v. *Page*, 339 Mass. 313, 316, 159 N. E. 2d 82, 85 (1959); *In re Perham*, 104 N. H. 276, 184 A. 2d 449 (1962).

[9] Colo. Rev. Stat. Ann. § 37–8–2 (1963); Kans. Stat. Ann. § 38–808 (1969 Supp.); Mich. Stat. Ann. § 27.3178 (598.17) (1962); Mont. Rev. Codes Ann. § 10–604.1 (1969 Supp.); Okla. Stat. Ann. Tit. 10, § 1110 (1970 Supp.); S. D. Comp. Laws § 26–8–31 (1967); Vernon's Tex. Civ. Stat. Art. 2338–1, § 13 (b) (1970 Supp.); W. Va. Code Ann. § 49–5–6– (1966); Wis. Stat. Ann. § 48.25 (2) (1967); Wyo. Stat. Ann. § 14–108 (c) (1965).

10. Since *Gault* and since *Duncan* the great majority of States, in addition to Pennsylvania and North Carolina, that have faced the issue have concluded that the considerations that led to the result in those two cases do not compel trial by jury in the juvenile court. *In re Fucini*, 44 Ill. 2d 305, 255 N. E. 2d 380 (1970); *Bible* v. *State*, 254 N. E. 2d 319 (Ind. 1970); *Dryden* v. *Commonwealth*, 435 S. W. 2d 457 (Ky. 1968); *In re Johnson*, 254 Md. 517, 255 A. 2d 419 (1969); *Hopkins* v. *Youth Court*, 227 S. 2d 282 (Miss. 1969); *In re J. W.*, 106 N. J. Super. 129, 254 A. 2d 334 (1969); *In re D.*, 27 N. Y. 2d 90, 261 N. E. 2d 627 (1970); *In re Agler*, 19 Ohio St. 2d 70, 249 N. E. 2d 808 (1969); *In re Turner*, 253 Oreg. 235, 453 P. 2d 910 (1969). See *In re Estes*, 73 Wash. 2d 263, 438 P. 2d 205 (1968); *In re Geiger*, 184 Neb. 581, 169 N. W. 2d 431 (1969). To the contrary are *Peyton* v. *Nord*, 78 N. Mex. 717, 437 P. 2d 716 (1968), and, semble, *Nieves* v. *United States*, 280 F. Supp. 994 (SDNY 1968).

11. Stopping short of proposing the jury trial for juvenile proceedings are the Uniform Juvenile Court Act, § 24 (a), approved in July 1968 by the National Conference of Commissioners on Uniform State Laws; the Standard Juvenile Court Act, Article V, § 19, proposed by the National Council on Crime and Delinquency (see W. Sheridan, Standards for Juvenile and Family Courts 73 (1968)); and the Legislative Guide for Drafting Family and Juvenile Court Acts § 29 (a) (1969) (issued by the Children's Bureau, Social and Rehabilitation Service, United States Department of H. E. W.).

12. If the jury trial were to be injected into the juvenile court system as a matter of right, it would bring with it into that system the traditional delay, the formality and the clamor of the adversary system and, possibly, the public trial. It is of interest that these very factors were stressed by the District Committee of the Senate

when, through Senator Tydings, it recommended, and Congress then approved, as a provision in the District of Columbia Crime Bill, the abolition of the jury trial in the juvenile court. S. Rep. No. 91–620, 91st Cong., 1st Sess., 1969, pp. 13–14.

13. Finally, the arguments advanced by the juveniles here are, of course, the identical arugments that underlie the demand for the jury trial for criminal proceedings. The arguments necessarily equate the juvenile proceeding—or at least the adjudicative phase of it—with the criminal trial. Whether they should be so equated is our issue. Concern about the inapplicability of exclusionary and other rules of evidence, about the juvenile court judge's possible awareness of the juvenile's prior record and of the contents of the social file; about repeated appearances of the same familiar witnesses in the persons of juvenile and probation officers and social workers—all to the effect that this will create the likelihood of pre-judgment—chooses to ignore, it seems to us, every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates.

If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it.

Affirmed.

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MR. JUSTICE WHITE, concurring.

Although the function of the jury is to find facts, that body is not necessarily or even probably better at the job than the conscientious judge. Nevertheless, the consequences of criminal guilt are so severe that the Constitution mandates a jury to prevent abuses of official power by insuring, where demanded, community participation in imposing serious deprivations of liberty and to provide a hedge against corrupt, biased, or political justice. We have not, however, considered the juvenile case a criminal proceeding within the meaning of the Sixth Amendment and hence automatically subject to all of the restrictions normally applicable in criminal cases. The question here is one of due process of law and I join the Court's opinion holding that the States are not required by that clause to afford jury trials in juvenile courts where juveniles are charged with acts.

The criminal law proceeds on the theory that defendants have a will and are responsible for their actions. A finding of guilt establishes that they have chosen to engage in conduct so reprehensible and injurious to others

that they must be punished to deter them and others from crime. Guilty defendants are considered blameworthy; they are branded and treated as such, however much the State also pursues rehabilitative ends in the criminal justice system.

For the most part, the juvenile justice system rests on more deterministic assumptions. Reprehensible acts by juveniles are not deemed the consequence of mature and malevolent choice but of environmental pressures (or lack of them) or of other forces beyond their control. Hence the state legislative judgment not to stigmatize the juvenile delinquent by branding him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others. Coercive measures, where employed, are considered neither retribution nor punishment. Supervision or confinement is aimed at rehabilitation, not at convincing the juvenile of his error simply by imposing pains and penalties. Nor is the purpose to make the juvenile delinquent an object lesson for others, whatever his own merits or demerits may be. A typical disposition in the juvenile court where delinquency is established may authorize confinement until age 21, but it will last no longer and within that period will last only so long as his behavior demonstrates that he remains an unacceptable risk if returned to his family. Nor is the authorization for custody until 21 any measure of the seriousness of the particular act which the juvenile has performed.

Against this background and in light of the distinctive purpose of requiring juries in criminal cases, I am satisfied with the Court's holding. To the extent that the jury is a buffer to the corrupt or overzealous prosecutor in the criminal law system, the distinctive intake policies and procedures of the juvenile court system to a great extent obviate this important function of the jury. As for the necessity to guard against judicial bias, a system

eschewing blameworthiness and punishment for evil choice is itself an operative force against prejudice and short-tempered justice. Nor where juveniles are involved is there the same opportunity for corruption to the juvenile's detriment or the same temptation to use the courts for political ends.

Not only are those risks that mandate juries in criminal cases of lesser magnitude in juvenile court adjudications, but the consequences of adjudication are less severe than those flowing from verdicts of criminal guilt. This is plainly so in theory, and in practice there remains a substantial gulf between criminal guilt and delinquency, whatever the failings of the juvenile court in practice may be. Moreover, to the extent that current unhappiness with juvenile court performance rests on dissatisfaction with the vague and overbroad grounds for delinquency adjudications, with faulty judicial choice as to disposition after adjudication or with the record of rehabilitative custody, whether institutional or probationary, these shortcomings are in no way mitigated by providing a jury at the adjudicative stage.

For me there remain differences of substance between criminal and juvenile courts. They are quite enough for me to hold that a jury is not required in the latter. Of course, there are strong arguments that juries are desirable when dealing with the young, and States are free to use juries if they choose. They are also free, if they extend criminal court safeguards to juvenile court adjudications, frankly to embrace condemnation, punishment, and deterence as permissible and desirable attributes of the juvenile justice system. But the Due Process Clause neither compels nor invites them to do so.

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MR. JUSTICE BRENNAN, concurring in No. 322 and dissenting in No. 128.

I agree with the plurality opinion's conclusion that the proceedings below in these cases were not "criminal prosecutions" within the meaning of the Sixth Amendment. For me, therefore, the question in these cases is whether jury trial is among the "essentials of due process and fair treatment," *In re Gault*, 387 U. S. 1, 30 (1967), required during the adjudication of a charge of delinquency based upon acts which would constitute a crime if engaged in by an adult. See *In re Winship*, 397 U. S. 358, 359, and n. 1 (1970). This does not, however, mean that the interests protected by the Sixth Amendment's guarantee of jury trial in all "criminal prosecutions" are of no importance in the context of these cases. The Sixth Amendment, where applicable, commands that these interests be protected by a particular procedure, that is, trial by jury. The Due Process Clause commands not a particular procedure, but only a result: in my Brother BLACKMUN'S words, "fundamental fairness . . . in factfinding." In the context of these and similar juvenile delinquency pro-

ceedings, what this means is that the States are not bound to provide jury trials on demand so long as some other aspect of the process adequately protects the interests that Sixth Amendment jury trials are intended to serve.[1]

In my view, therefore, the due process question cannot be decided upon the basis of general characteristics of juvenile proceedings, but only in terms of the adequacy of a particular state procedure to "protect the [juvenile] from oppression by the Government," *Singer* v. *United States*, 380 U. S. 24, 31 (1965), and to protect him against "the compliant, biased, or eccentric judge." *Duncan* v. *Louisiana*, 391 U. S. 145, 156 (1968).

Examined in this light, I find no defect in the Pennsylvania cases before us. The availability of trial by jury allows an accused to protect himself against possible oppression by what is in essence an appeal to the community conscience, as embodied in the jury that hears his case. To some extent, however, a similar protection may be obtained when an accused may in essence appeal to the community at large, by focusing public attention upon the facts of his trial, exposing improper judicial behavior to public view, and obtaining if necessary executive redress through the medium of public indignation. Of course the Constitution, in the context of adult criminal trials, has rejected the notion that public trial is an adequate substitute for trial by jury in serious cases. But in the context of juvenile delinquency proceedings, I cannot say that it is beyond the competence of a State

[1] "A criminal process which was fair and equitable but used no juries is easy to imagine. It would make use of alternative guarantees and protections which would serve the purposes that the jury serves in the English and American systems." *Duncan* v. *Louisiana*, 391 U. S. 145, 150 n. 14 (1968). This conclusion is, of course, inescapable in light of our decisions that petty criminal offenses may be tried without a jury notwithstanding the defendant's request. *E. g., District of Columbia* v. *Clawans*, 300 U. S. 617 (1937).

to conclude that juveniles who fear that delinquency proceedings will mask judicial oppression may obtain adequate protection by focusing community attention upon the trial of their cases. For however much the juvenile system may have failed in practice, its very existence as an ostensibly beneficient and noncriminal process for the care and guidance of young persons demonstrates the existence of the community's sympathy and concern for the young. Juveniles able to bring the community's attention to bear upon their trials may therefore draw upon a reservoir of public concern unavailable to the adult criminal defendant. In the Pennsylvania cases before us, there appears to be no statutory ban upon admission of the public to juvenile trials.[2] Appellants themselves, without contradiction, assert that "the press is generally admitted" to juvenile delinquency proceedings in Philadelphia.[3] Most important, the record in these cases is bare of any indication that any person whom appellants sought to have admitted to the courtroom was excluded. In these circumstances, I agree that the judgment in No. 322 must be affirmed.

The North Carolina cases, however, present a different situation. North Carolina law either permits or requires exclusion of the general public from juvenile trials.[4] In

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[2] The generally applicable statute, Pa. Stat. Ann. § 11-245 (1965), merely provides that juvenile proceedings shall be "separate" from regular court business. Pa. Stat. Ann. § 11-269-402 (1970), requiring exclusion of the general public from juvenile hearings, applies only to Allegheny County. Both of the instant cases were tried in Philadelphia County.

[3] "The judges of the Philadelphia Juvenile Court exercise varying degrees of control over admission to the courtroom, but the press is generally admitted . . . ." Brief for Appellants, at 9 n. 9.

[4] N. C. Gen. Stat. § 110-24 (19—), as in force at the time of these trials, appears on its face to permit but not require such exclusion, as does the identical language of the present statute, N. C. Gen. Stat. § 7A-285 (19—). The North Carolina Supreme Court in the present

the cases before us, the trial judge "ordered the general public excluded from the hearing room and stated that only officers of the court, the juveniles, their parents or guardians, their attorney and witnesses would be present for the hearing." *In re Burrus*, 4 N. C. App. 523, —, 167 S. E. 2d 254, — (1969), notwithstanding petitioners' repeated demand for a public hearing. The cases themselves, which arise out of a series of demonstrations by black adults and juveniles who believed that the Hyde County, North Carolina, school system unlawfully discriminated against black schoolchildren, present a paradigm of the circumstances in which there may be a substantial "temptation to use the courts for political ends." Opinion of MR. JUSTICE WHITE, *ante*, at [3]. And finally, neither the opinions supporting the judgment nor the respondent in No. 128 has pointed to any feature of North Carolina's juvenile proceedings that could substitute for public or jury trial in protecting the petitioners against misuse of the judicial process. Cf. *Duncan* v. *Louisiana*, 391 U. S. 145, 188, 193 (1968) (HARLAN, J., dissenting) (availability of resort to "the political process" is an alternative permitting States to dispense with jury trials). Accordingly, I would reverse the judgment in No. 128.

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cases has read these statutes as a legislative determination "that a public hearing is [not] in the best interest of the youthful offender." *In re Burrus*, — N. C. —, —, 169 S. E. 2d 879, — (1969).

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MR. JUSTICE HARLAN, concurring in the judgments.

If I felt myself constrained to follow *Duncan* v. *Louisiana*, 391 U. S. 145 (1968), which extended the Sixth Amendment right of jury trial to the States, I would have great difficulty, upon the premise seemingly accepted in my Brother BLACKMUN's opinion, in holding that the jury trial right does not extend to state juvenile proceedings. That premise is that juvenile delinquency proceedings have in practice actually become in many, if not all, respects criminal trials. But see my concurring and dissenting opinion in *In re Gault*, 387 U. S. 1, 65 (1967). If that premise be correct, then I do not see why, given *Duncan*, juveniles as well as adults would not be constitutionally entitled to jury trials, so long as juvenile delinquency systems are not restructured to fit their original purpose. When that time comes I would have no difficulty in agreeing with my Brother BLACKMUN, and indeed with my Brother WHITE, the author of *Duncan*, that juvenile delinquency proceedings are beyond the pale of *Duncan*.

I concur in the judgments in these cases however, on the ground that criminal jury trials are not constitutionally required of the States, either as a matter of Sixth Amendment law or due process. See my dissenting opinion in *Duncan* and my concurring opinion in *Williams* v. *Florida*, 399 U. S. 78, 118–119 (1970).

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MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK and MR. JUSTICE MARSHALL concur, dissenting.

These cases from Pennsylvania and North Carolina present the issue of the right to a jury trial for offenders charged in juvenile court and facing a possible incarceration until they reach their majority. I believe the guarantees of the Bill of Rights, made applicable to the States by the Fourteenth Amendment, require a jury trial.

In the Pennsylvania cases one of the appellants was charged with robbery (18 Pa. Stat. Ann. § 4704), larceny (18 Pa. Stat. Ann. § 4807), and receiving stolen goods (18 Pa. Stat. Ann. § 4817) as acts of juvenile delinquency. 11 Pa. Stat. Ann. § 246. He was found a delinquent and placed on probation. The other appellant was charged with assault and battery on a police officer (18 Pa. Stat. Ann. § 4708) and conspiracy (18 Pa. Stat. Ann. § 4302) as acts of juvenile delinquency. On a finding of delinquency he was committed to a youth center. Despite the fact that the two appellants, aged 15 and 16, would face potential incarceration until their majority, 11 Pa. Stat. Ann. § 250, they were denied a jury trial.

In the North Carolina cases petitioners are students, from 11 to 15 years of age, who were charged under one of three criminal statutes: (1) "disorderly conduct" in a public building, G. S. 14–132; (2) "wilful" interruption or disturbance of a public or private school, G. S. 14–273; or (3) obstructing the flow of traffic on a highway or street, G. S. 20–174.1.

Conviction for each of these crimes would subject a person, whether juvenile or adult, to imprisonment in a state institution. In the case of these students the possible term was six to 10 years; it would be computed for the period until an individual reached the age of 21. Each asked for a jury trial which was denied. The trial judge stated that the hearings were juvenile hearings, not criminal trials. But the issue in each case was whether they had violated a state criminal law. The trial judge found in each case that the juvenile had committed "an act for which an adult may be punished by law" and held in each case that the acts of the juvenile violated one of the criminal statutes cited above. The trial judge thereupon ordered each juvenile to be committed to the state institution for the care of delinquents and then placed each on probation for terms from 12 to 24 months.

We held in *In re Gault*, 387 U. S. 1, 13, that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." As we noted in that case, the Juvenile Court movement was designed to avoid procedures to ascertain whether the child was "guilty" or "innocent" but to bring to bear on these problems a "clinical" approach. *Id.*, at 15, 16. It is of course not our task to determine as a matter of policy whether a "clinical" or "punitive" approach to these problems should be taken by the States. But where a State uses its juvenile court proceedings to prosecute a juvenile for a criminal act and to order "confinement" until the child reaches 21 years of age or where the child at the threshold of the

proceedings faces that prospect, then he is entitled to the same procedural protection as an adult. As MR. JUSTICE BLACK said in *In re Gault, supra,* at 61 (concurring):

> "Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws—an invidious discrimination—to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards."

Just as courts have sometimes confused delinquency with crime, so have law enforcement officials treated juveniles not as delinquents but as criminals. As noted in the President's Crime Commission Report:

> "In 1965, over 100,000 juveniles were confined in adult institutions. Presumably most of them were there because no separate juvenile detention facilities existed. Nonetheless it is clearly undesirable that juveniles be confined with adults."

President's Commission on Law Enforcement, Challenge of Crime 179 (1967). Even when not incarcerated with adults the situation may be no better. One Pennsylvania correctional institution for juveniles is a brick building with barred windows, locked steel doors, a cyclone fence topped with barbed wire and guard towers. A former juvenile judge described it as "a maximum security prison for adjudged delinquents." *In re Bethea,* 215 Pa. Super. 75, 76, 257 A. 2d 368, 369.

In the present cases imprisonment or confinement up to 10 years was possible for one child and each faced at least a possible five-year incarceration. No adult could be denied a jury trial in those circumstances. *Duncan* v. *Louisiana*, 391 U. S. 145, 162. The Fourteenth Amendment which makes trial by jury provided in the Sixth Amendment applicable to States speaks of denial of rights to "any person," not denial of rights to "any adult person"; and we have held indeed that where a juvenile is charged with an act that would constitute a crime if committed by an adult, he is entitled to trial by jury with proof beyond a reasonable doubt. *In re Winship*, 397 U. S. 358.

In *De Backer* v. *Brainard*, 396 U. S. 28, 33 MR. JUSTICE BLACK and I dissented from a refusal to grant a juvenile, who was charged with forgery, a jury trial merely because the case was tried before *Duncan* v. *Louisiana*, 391 U. S. 145 was decided. MR. JUSTICE BLACK, after noting that a juvenile being charged with a criminal act was entitled to certain constitutional safeguards, *viz.* notice of the issues, benefit of counsel, protection against compulsory self-incrimination, and confrontation of the witnesses against him, added:

> "I can see no basis whatsoever in the language of the Constitution for allowing persons like appellant the benefit of those rights and yet denying them a jury trial, a right which is surely one of the fundamental aspects of criminal justice in the English-speaking world." 396 U. S., at 34.

I added that by reason of the Sixth and Fourteenth Amendments the juvenile is entitled to a jury trial:

> ". . . as a matter of right where the delinquency charged is an offense that, if the person were an adult, would be a crime triable by jury. Such is

this case, for behind the facade of delinquency is the crime of forgery." *Id.*, at 35.

Practical aspects of these problems are urged against allowing a jury trial in these cases.* They have been answered by Judge De Ciantis of the Family Court of Providence, Rhode Island, in a case entitled In the Matter of McCloud, decided January 15, 1971. A juvenile was charged with the rape of a 17-year-old female and Judge De Ciantis granted a motion for a jury trial in an opinion, a part of which I have attached as an appendix to this dissent. He there concludes that "the real traumatic"

*The Public Defender Service for the District of Columbia and the Neighborhood Legal Services Program of Washington, D. C., have filed a brief *amicus* in which the results of a survey of jury trials in delinquency cases in the 10 States requiring jury trials plus the District of Columbia are set forth. The cities selected were mostly large metropolitan areas. Thirty juvenile courts processing about 75,000 juvenile cases a year were canvassed:

". . . we discovered that during the past five and a half years, in 22 out of 26 courts surveyed, cumulative requests for jury trials totaled 15 or less. In the remaining five courts in our sample, statistics were unavailable. During the same period, in 26 out of 29 courts the cumulative number of jury trials actually held numbered 15 or less, with statistics unavailable for two courts in our sample. For example, in Tulsa, Oklahoma, counsel is present in 100% of delinquency cases, but only one jury trial has been requested and held during the past five and one-half years. In the Juvenile Court of Fort Worth, Texas, counsel is also present in 100% of the cases, and only two jury trials have been requested since 1967. The Juvenile Court in Detroit, Michigan, reports that counsel is appointed in 70–80% of its delinquency cases, but thus far in 1970, it has had only four requests for a jury. Between 1965 and 1969 requests for juries were reported as 'very few.'

"In only four juvenile courts in our sample has there clearly been a total during the past five and one-half years of more than 15 jury trial requests and/or more than 15 such trials held."

The four courts showing more than 15 requests for jury trials were Denver, Houston, Milwaukee, and Washington, D. C.

experience of incarceration without due process is "the feeling of being deprived of basic rights." He adds:

> "The child who feels that he has been dealt with fairly and not merely expediently or as speedily as possible will be a better prospect for rehabilitation. Many of the children who come before the court come from broken homes, from the ghettos; they often suffer from low self-esteem; and their behavior is frequently a symptom of their own feelings of inadequacy. Traumatic experiences of denial of basic rights only accentuate the past deprivation and contribute to the problem. Thus, a general societal attitude of acceptance of the juvenile as a person entitled to the same protection as an adult may be the true beginning of the rehabilitative process."

Judge De Ciantis goes on to say that "Trial by jury will provide the child with a safeguard against being prejudged" by a judge who may well be prejudiced by reports already submitted to him by the police or case-workers in the case. Indeed the child, the same as the adult, is in the category of those described in the Magna Carta:

> "No freeman may be . . . imprisoned . . . except by the lawful judgment of his peers, or by the law of the land."

These cases should be remanded for trial by jury on the criminal charges filed against these youngsters.

APPENDIX TO DISSENT IN NO. 128
(DOUGLAS, J.)

De Ciantis, J.: The defendant, who will hereinafter be referred to as a juvenile, on the sixth day of September, 1969, was charged with Rape upon a female child, seventeen years old, in violation of Title 11, Chapter 37, Section 1, of the General Laws of 1956. . . .

TRAUMA

The fact is that the procedures which are now followed in juvenile cases are far more traumatic than the potential experience of a jury trial. Who can say that a boy who is arrested and handcuffed, placed in a lineup, transported in vehicles designed to convey dangerous criminals, placed in the same kind of a cell as an adult, deprived of his freedom by lodging him in an institution where he is subject to be transferred to the state's prison and in the "hole" has not undergone a traumatic experience?

The experience of a trial with or without a jury is meant to be impressive and meaningful. The fact that a juvenile realizes that his case will be decided by twelve objective citizens would allow the court to retain its meaningfulness without causing any more trauma than a trial before a judge who perhaps has heard other cases involving the same juvenile in the past and may be influenced by those prior contacts. To agree that a jury trial would expose a juvenile to a traumatic experience is to lose sight of the real traumatic experience of incarceration without due process. The real traumatic experience is the feeling of being deprived of basic rights. *In the matter of Reis*,[1] this Court indicated the inadequacies of the procedure under which our court operates. A judge who receives facts of a case from the police and

[1] Reis, 7 CrL 2151 (1970).

approves the filing of a petition based upon those facts may be placed in the untenable position of hearing a charge which he has approved. His duty is to adjudicate on the evidence introduced at the hearing and not be involved in any pre-adjudicatory investigation.

It is contrary to the fundamental principles of due process for the court to be compelled, as it is in this state, to act as a one-man grand jury, then sit in judgment on its own determination arising out of the facts and proceedings which he conducted. This responsibility belongs with a jury.

BACKLOG

An argument has been made that to allow jury trials would cause a great backlog of cases and, ultimately, would impair the functioning of the juvenile court. The fact however is that there is no meaningful evidence that granting the right to jury trials will impair the function of the court. Some states permit jury trials in *all* juvenile court cases; few juries have been demanded, and there is no suggestion from these courts that jury trials have impeded the system of juvenile justice.

In Colorado, where jury trials have been permitted by statute, Judge Theodore Rubin of the Denver Juvenile Court has indicated that jury trials are an important safeguard and that they have not impaired the functioning of the Denver Juvenile Courts. For example, during the first seven months of 1970, the two divisions of the Denver Juvenile Court have had fewer than two dozen jury trials, in both delinquency and dependency-neglect cases. In Michigan, where juveniles are also entitled to a jury trial, Judge Lincoln of the Detroit Juvenile Court indicates that his court has had less than five jury trials in the year 1969 to 1970.

The recent Supreme Court decision of *Williams* v. *Florida*, 90 S. Ct. 1893 (June 22, 1970), which held that the constitutional right to trial by jury in criminal cases

does not require a twelve-member jury, could be implemented to facilitate the transition to jury trials. A jury of less than twelve members would be less cumbersome, less "formal," and less expensive than the regular twelve-member jury, and yet would provide the accused with objective fact-finders.

In fact the very argument of expediency, suggesting "supermarket" or "assembly-line" justice is one of the most forceful arguments in favor of granting jury trials. By granting the juvenile the right to a jury trial, we would, in fact, be protecting the accused from the judge who is under pressure to move the cases, the judge with too many cases and not enough time. It will provide a safeguard against the judge who may be prejudiced against a minority group or who may be prejudiced against the juvenile brought before him because of some past occurrence which was heard by the same judge.

There have been criticisms that juvenile court judges, because of their hearing caseload, do not carefully weigh the evidence in the adjudicatory phase of the proceedings. It is during this phase that the judge must determine whether in fact the evidence has been established beyond a reasonable doubt that the accused committed the acts alleged in the petition. Regardless of the merit of these criticisms they have impaired the belief of the juveniles, of the bar and of the public as to the opportunity for justice in the juvenile court. Granting the juvenile the right to demand that the facts be determined by a jury will strengthen the faith of all concerned parties in the juvenile system. . . .

It is important to note, at this time, a definite side benefit of granting jury trials, *i. e.*, an aid to rehabilitation. The child who feels that he has been dealt with fairly and not merely expediently or as speedily as possible will be a better prospect for rehabilitation. Many of the children who come before the court come from broken

homes, from the ghettos; they often suffer from low self-esteem; and their behavior is frequently a symptom of their own feelings of inadequacy. Traumatic experiences of denial of basic rights only accentuate the past deprivation and contribute to the problem. Thus, a general societal attitude of acceptance of the juvenile as a person entitled to the same protection as an adult may be the true beginning of the rehabilitative process.

PUBLIC TRIAL

Public trial in the judgment of this Court does not affect the juvenile court philosophy.

In re Oliver[2] MR. JUSTICE BLACK reviews the history of the public trial. Its origins are obscure, but it seems to have evolved along with the jury trial guarantee in English common law and was then adopted as a provision of the Federal Constitution as well as by most state constitutions. Among the benefits of a public trial are the following:

> 1. "Public trials come to the attention of key witnesses unknown to the parties. These witnesses may then voluntarily come forward and give important testimony."
>
> 2. "The spectators learn about their government and acquire confidence in their judicial remedies."
>
> 3. "The knowledge that every *criminal* trial is subject to contemporaneous review in the form of public opinion is an effective restraint on possible abuse of judicial power." (P. 270.)

JUSTICE BLACK has nothing to say on the question of whether a public trial acts as a deterrent to crime, but it is clear that he believes *publicity to improve the quality of criminal justice, both theoretically and practically.*

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[2] 333 U. S. 257.

As for the juvenile trial issue, he writes:

> "Whatever may be the classification of juvenile court proceedings, they are often conducted without admitting all the public. But it has never been the practice to wholly exclude parents, relatives, and friends, or to refuse juveniles the benefit of counsel." (P. 266.)

In fact, the juvenile proceedings as presently conducted are far from secret. Witnesses for the prosecution and for the defense, social workers, court reporters, students, police trainees, probation counselors, and sheriffs are present in the courtroom. Police, the Armed Forces, the Federal Bureau of Investigation obtain information and have access to the police files. There seems no more reason to believe that a jury trial would destroy confidentiality than would witnesses summoned to testify.

The Court also notes the report of the PRESIDENT'S COMMISSION OF LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 75 (1967), wherein it is stated:

> "A juvenile's adjudication record is required by the law of most jurisdictions to be private and confidential; in practice the confidentiality of those reports is often violated." Furthermore, "[s]tatutory restrictions almost invariably apply only to court records, and even as to those the evidence is that many courts routinely furnish information to the FBI and the military, and on request to government agencies and even to private employers."

JUDGE'S EXPERTISE

The Court is also aware of the argument that the juvenile court was created to develop judges who were experts in sifting out the real problems behind a juvenile's

breaking the law; therefore, to place the child's fate in the hands of a jury would defeat that purpose. This will, however, continue to leave the final decision of disposition solely with the judge. The role of the jury will be only to ascertain whether the facts, which give the court jurisdiction, have been established beyond a reasonable doubt. The jury will not be concerned with social and psychological factors. These factors, along with prior record, family and educational background, will be considered by the judge during the dispositional phase.

Taking into consideration the social background and other facts, the judge, during the dispositional phase, will determine what disposition is in the best interests of the child and society. It is at this stage that a judge's expertise is most important, and the granting of a jury trial will not prevent the judge from carrying out the basic philosophy of the juvenile court.

Trial by jury will provide the child with a safeguard against being prejudged. The jury clearly will have no business in learning of the social report or any of the other extraneous matter unless properly introduced under the rules of evidence. Due process demands that the trier of facts should not be acquainted with any of the facts of the case or have knowledge of any of the circumstances, whether through officials in his own department or records in his possession. If the accused believes that the judge has read an account of the facts submitted by the police or any other report prior to the adjudicatory hearing and that this may prove prejudicial, he can demand a jury and insure against such knowledge on the part of the trier of the facts.

WAIVER OF JURY TRIAL

Counsel also questions whether a child can waive his right to a jury trial or, in fact, whether a parent or counsel may waive.

When the waiver comes up for hearing, the Court could, at its discretion, either grant or refuse the juvenile's waiver of a jury trial, and/or appoint a guardian or legal counsel to advise the child.

My experience has shown that the greatest percentage of juveniles who appear before the court in felony cases have lived appalling lives due to parental neglect and brutality, lack of normal living conditions, and poverty. This has produced in them a maturity which is normally acquired much later in life. They are generally well aware of their rights in a court of law. However, in those cases where a child clearly needs guidance, the court-appointed guarandian or attorney could explain to him the implications of a waiver. The juvenile's rights and interests would thus be protected every bit as stringently as they are today before he is allowed to plead guilty or not guilty to a complaint. A guilty plea is, after all, a waiver of the right to trial altogether.

Counsel is placed with the responsibility of explaining to the juvenile the significance of guilty and *nolo contendere* pleas, of instructing the juvenile on the prerogative to take the witness stand, and is expected to advise his client in the same manner as he would an adult to stand trial. And now counsel suggests to the Court that counsel is not capable of explaining and waiving the right to a jury trial. The Court fails to see the distinction between this waiver and the absolute waiver, to wit, a guilty plea. Counsel should act in the best interest of his client, even if this may be in conflict with the parents. On a number of occasions this Court has appointed counsel for a juvenile whose parents could not afford to retain private counsel, and where the parents' interests were in conflict with those of the child. This procedure will be continued and the Court will continue to rely on the good judgment of the bar.

The Court could easily require that a waiver of a jury trial be made in person by the juvenile in writing, in

open court, with the consent and approval of the Court and the attorney representing both the juvenile and the state. The judge could ascertain as to whether the juvenile can intelligently waive his right and, if necessary, appoint counsel to advise the youth as to the implications connected with the waiver. This could be accomplished without any difficulty through means presently available to the Court.

JURY OF PEERS

One of the most interesting questions raised is that concerning the right of a juvenile to a trial by his peers. Counsel has suggested that a jury of a juvenile's peers would be composed of other juveniles, that is, a "teenage jury." Webster's Dictionary, Second Edition, 1966, defines a peer as an equal, one of the same rank, quality, value. The word "peers" means nothing more than citizens, *In re Grilli*, 179 N. Y. S. 795, 797. The phrase "judgment of his peers" means at common law, a trial by a jury of twelve men, *State* v. *Simon*, Kan. 752. "Judgment of his peers" is a term expressly borrowed from the Magna Charta, and it means a trial by jury, *Ex parte Wagner*, 58 Okl. Cr. 161. The Declaration of Independence also speaks of the equality of *all* men. Are we now to say that a juvenile is a second-class citizen, not equal to an adult? The Constitution has never been construed to say women must be tried by their peers, to wit, by all-female juries, or Negroes by all-Negro juries.

The only restriction on the makeup of the jury is that there can be no systematic exclusion of those who meet local and federal requirements, in particular, voting qualifications.

The Court notes that presently in some states 18-year-olds can vote. Presumably, if they can vote, they may also serve on juries. Our own legislature has given first

passage to an amendment to the Constitution to permit 18-year-olds to vote. Thus, it is quite possible that we will have teenage jurors sitting in judgment of their so-called "peers."

CRIMINAL PROCEEDING

The argument that the adjudication of delinquency is not the equivalent of criminal process is spurious. This Court has discussed the futility of making distinctions on the basis of labels in prior decisions. Because the legislature dictates that a child who commits a felony shall be called a delinquent does not change the nature of the crime. Murder is murder; robbery is robbery—they are both criminal offenses, not civil, regardless and independent of the age of the doer. . . .

It is noteworthy that in our statute there is not an express statutory provision indicating that the proceedings are civil. Trial by jury in Rhode Island is guaranteed to *all* persons, whether in criminal cases or in civil cases. That right existed prior to the adoption of the Constitution; and certainly whether one is involved in a civil or criminal proceeding of the Family Court in which his "liberty" is to be "taken" "imprisoned" "outlawed" and "banished" he is entitled to a trial by jury. (*Henry* v. *Cherry & Webb*, 30 R. I. 13, at 30).

This Court believes that although the juvenile court was initially created as a social experiment, it has not ceased to be part of the judicial system. In view of the potential loss of liberty at stake in the proceeding, this Court is compelled to accord due process to all the litigants who come before it; and, therefore, all of the provisions of the Bill of Rights, including trial by jury, must prevail.

The Court concludes that the framers of our Constitution never intended to place the power in any one man or official, and take away the "protection of the law from

the rights of an individual." It meant "to secure the blessings of liberty to themselves and posterity." The Constitution was written with the philosophy based upon a composite of all of the most liberal ideas which came down through the centuries. The Magna Charta, the Petition of Rights, the Bill of Rights and the Rules of Common Law; and the keystone is the preservation of individual liberty. All these ideas were carefully inserted in our Constitution.

The juvenile is constitutionally entitled to a jury trial.